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July 20, 2001

VIA HAND DELIVERY

Mr. Thomas M. Dorman
Executive Director
Public Service Commission
211 Sower Boulevard
Frankfort, KY 40602

RE: ***Joint Application of E.ON AG, Powergen plc, LG&E Energy Corp., Louisville Gas and Electric Company, and Kentucky Utilities Company For Approval of An Acquisition***
Case No. 2001-104
Our File No. 1/251

Dear Mr. Dorman:

Please find enclosed and accept for filing the original and ten (10) copies of the Post-Hearing Brief of E.ON AG, Powergen plc, LG&E Energy Corp., Louisville Gas and Electric Company and Kentucky Utilities Company in the above-referenced case. Please confirm your receipt of this filing by placing the stamp of your Office with the date received on the additional copy of this letter and return to me in the self-addressed stamped envelope.

Should you have any questions concerning the enclosed, please contact me at your convenience.

Yours very truly,

Kendrick R. Riggs

KRR/md
Enclosures
cc: All Parties of Record
Guntram Würzberg
John R. McCall
Sara Vaughan

224385.01

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE JOINT APPLICATION OF E.ON AG,	)	
POWERGEN PLC, LG&E ENERGY CORP.,	)	
LOUISVILLE GAS AND ELECTRIC COMPANY	)	CASE NO. 2001-104
AND KENTUCKY UTILITIES COMPANY	)	
FOR APPROVAL OF AN ACQUISITION	)	

POST-HEARING BRIEF OF THE JOINT APPLICANTS

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I. Introduction

E.ON AG ("E.ON"), Powergen plc ("Powergen"), LG&E Energy Corp. ("LG&E Energy"), Louisville Gas and Electric Company ("LG&E"), and Kentucky Utilities Company ("KU") (collectively referred to as "Joint Applicants"), by counsel, have petitioned this Commission for approval of the acquisition of ownership and control of LG&E and KU by E.ON pursuant to KRS 278.020(4) and (5).

II. Overview

This Brief explains why E.ON is acquiring Powergen, which acquired LG&E Energy in December 2000, and demonstrates that the proposed transaction is in full compliance with KRS 278.020(4) and (5).

This Brief also demonstrates that important constants have remained throughout the acquisitions that have occurred in Kentucky since 1998 – beginning with the LG&E Energy-KU Energy merger, continuing with the Powergen-LG&E Energy merger, and leading to the proposed acquisition of Powergen by E.ON. LG&E and KU have continued to provide their customers with low-cost, very reliable service. This constancy and excellence are evidenced by the J.D. Power & Associates awards that LG&E Energy received in 1999 and 2000, and that LG&E Energy has recently received in 2001.[1] The effect of that merger and the subsequent merger of LG&E Energy with Powergen have only strengthened Kentucky's two most prominent utility companies.

By means of the proposed acquisition, E.ON will bring its considerable resources to bear on the combined E.ON-Powergen-LG&E Energy group so that LG&E and KU may become even stronger than they already are. E.ON also will honor commitments that have been made over the course of the last several years plus additional commitments by E.ON that will ensure this Commission's ongoing regulation and supervision of LG&E's and KU's rates and services. It is reasonable to anticipate that, as a result of these efforts, Kentucky will experience an uncommon and valuable opportunity as the center of the vital U.S. energy industry.

III. E.ON Has the Necessary Financial, Technical, and Managerial Abilities to Provide Reasonable Service Through LG&E and KU After the Proposed Acquisition of Ownership and Control.

KRS 278.020(4)[2] provides that the Commission shall approve the proposed acquisition of ownership and control of LG&E and KU if E.ON has the financial, technical, and managerial abilities for LG&E and KU to provide reasonable service. The record demonstrates that E.ON clearly has those abilities both on its own account and through LG&E and KU, and that LG&E and KU have the same abilities to provide reasonable service to ratepayers in Kentucky. The proposed acquisition enhances the utilities' substantial abilities in all three areas. The criteria of KRS 278.020(4) are satisfied.

A. E.ON has the Financial Ability to Provide Reasonable Service Following the Proposed Acquisition.

E.ON has the financial ability to provide reasonable service. As of March 31, 2001, E.ON was debt free and had $3 billion of available liquid assets.[3] As of April 6, 2001, E.ON had a market capitalization of $36 billion.[4] E.ON has resources and bank facilities in place that are more than sufficient to cover the cost of acquiring Powergen.[5]

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[1] See Sections V.A.4. and VIII.D. for a discussion of these awards.

[2] KRS 278.020(4) provides:

> No person shall acquire or transfer ownership of, or control, or the right to control, any utility under the jurisdiction of the commission by sale of assets, transfer of stock, or otherwise, or abandon the same, without prior approval by the commission. The commission shall grant its approval if the person acquiring the utility has the financial, technical, and managerial abilities to provide reasonable service.

[3] Informal Conference Presentation, May 22, 2001, slide no. 10 (hereinafter referred to as "Informal Conference").

[4] Pre-Filed Testimonies of Dr. Hans Michael Gaul, p. 5 and Dr. Johannes Teyssen, pp. 4-; Informal Conference, slide no. 8.

[5] Pre-Filed Testimony of Dr. Rolf Pohlig, p. 3.

E.ON has one of the best corporate credit ratings of electric utility companies in Europe.[6] Moody's Investors Services assigned corporate credit ratings to European electric utilities and ranked the companies as of May 4, 2001. E.ON was ranked fifth out of fifty-nine electric utilities and had a corporate credit rating of Aa2/P-1.[7] E.ON will purchase Powergen's shares with existing liquid assets and lines of credit, and still retain sufficient purchasing ability to make future acquisitions. After the consummation of the acquisition of Powergen, E.ON will continue to have substantial financial strength and will have the ability to provide reasonable service.

Furthermore, E.ON intends to dispose of certain non-utility assets in order to accomplish its strategic objectives of focus and growth and to meet the requirements of the Public Utility Holding Company Act of 1935 ("PUHCA"), thus providing additional resources.[8] E.ON began its plan of asset disposition in 2000 and already has realized $19 billion from the sale of such assets.[9] Following the proposed acquisition, LG&E and KU will continue to maintain their balanced capital structures.[10] E.ON will have available resources of up to €50 billion (approximately $45 billion as of April 6, 2001) with which to continue to pursue its strategic goals.[11]

LG&E and KU also will benefit from E.ON's substantial financial strength and access to capital markets.[12] If, for any reason, neither E.ON nor Powergen is able to provide needed capital, both LG&E and KU will have the ability in the future to seek alternative funding subject

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[6] Pre-Filed Testimony of Dr. Rolf Pohlig, p. 4.
[7] Pre-Filed Testimony of Dr. Rolf Pohlig, Exhibits B and C; Informal Conference, slide no. 11.
[8] Pre-Filed Testimony of Dr. Rolf Pohlig, pp. 2, 3, 7 and 8; Response to Data Requests AG 2-11 and PSC 3-9; I T.E. 133.
[9] Informal Conference, slide no. 13.
[10] See Appendix A, Operations and Financials, Item 10(a) and (f).
[11] Pre-Filed Testimonies of Dr. Hans Michael Gaul, p. 6 (which was adopted by Dr. Erhard Schipporeit at the Hearing), Dr. Rolf Pohlig, pp. 3 and 6 and Dr. Kenneth Gordon, pp. 4 and 15; I T.E. 32.
[12] JA, p. 6; Pre-Filed Testimony of Dr. Rolf Pohlig, p. 6.

to any necessary regulatory approval.[13] No cross-guarantees of debt will be in place between LG&E or KU and any E.ON affiliate.[14] LG&E and KU will provide financing for E.ON's investment only through the payment of dividends from shareholder-owned funds and will not guarantee the credit of any affiliates without this Commission's approval.[15] Powergen, LG&E Energy, or any of LG&E Energy's subsidiaries, including LG&E and KU, will not borrow or issue any security, incur any debt, or pledge any assets to finance any part of the purchase price paid by E.ON for the Powergen stock.[16] E.ON represents and agrees that all transaction-related costs, including the cost of purchase and the premium paid for the Powergen transaction, shall be excluded for rate-making purposes and from the rates of LG&E and KU.[17]

E.ON, Powergen, LG&E Energy, LG&E and KU commit that LG&E Energy, its subsidiaries, LG&E and KU, and their ratepayers, directly or indirectly, shall not incur any additional costs, liabilities, or obligations in conjunction with the acquisition of Powergen by E.ON including, but not limited to, the following:

a. LG&E Energy, LG&E, and KU shall not incur any additional indebtedness, issue any additional securities, or pledge any assets to finance any part of the purchase price paid by E.ON for the Powergen stock.

b. The payment for the Powergen stock shall be recorded on E.ON's books, not the books of LG&E Energy or its subsidiaries.

c. The premium paid by E.ON for the Powergen stock, as well as any other associated costs, shall not be "pushed down" to LG&E or KU for rate-making purposes.

d. All transaction-related costs, including the cost of purchase and the premium paid for the Powergen transaction, shall be excluded for rate-making purposes and from the rates of LG&E and KU.

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[13] JA, pp. 6-7.
[14] JA, p. 7.
[15] JA, p. 7.
[16] JA, p. 7; Pre-Filed Testimony of Dr. Rolf Pohlig, p. 3; Appendix A, Operations and Financials, Item 10(a).
[17] JA, p.7; Pre-Filed Testimony of Mr. Michael S. Beer, p. 1; Appendix A, Operations and Financials, Item 10(d).

e. LG&E and KU shall not seek a higher rate of return on equity in future rate cases than would have been sought if no acquisition had occurred.

f. The current outstanding preferred stock of LG&E and KU shall not be changed, converted, or otherwise exchanged in conjunction with the acquisition.

g. The accounting and rate-making treatments of LG&E's and KU's excess deferred income taxes shall not be affected by the acquisition by E.ON of Powergen.

h. No costs of the Advisory Board shall be borne by LG&E or KU.

i. No change in control payments will be allocated to the ratepayers of LG&E and KU.

j. If early termination costs are incurred for any senior management of LG&E Energy, none of these costs will be allocated to LG&E or KU.

k. Any additional administrative costs incurred in order to comply with the financial and accounting standards of the United States, the United Kingdom or the Federal Republic of Germany as a result of this acquisition will not be borne by LG&E and KU.

l. No generation assets located within Kentucky will be sold to finance this or any subsequent acquisition without prior Commission authorization.[18]

E.ON has the financial ability for LG&E and KU to provide reasonable service following the proposed acquisition pursuant to KRS 278.020(4).

B. E.ON has the Technical Ability to Provide Reasonable Service Following the Proposed Acquisition.

E.ON is the fourth largest electric utility in the world by electricity sales volume (pro forma 2000).[19] E.ON (including its minority shareholdings) supplies electricity and natural gas to approximately 25 million customers.[20] E.ON has vast technical experience by virtue of its attributable 29,000 megawatts of total generation capacity in multiple technologies (as of year-

[18] Appendix A, Operations and Financials, Item 10.
[19] Pre-Filed Testimony of Dr. Johannes Teyssen, p. 7; I T.E. 27-28.
[20] Pre-Filed Testimony of Dr. Johannes Teyssen, p. 7; Informal Conference, slide no. 22; I T.E. 27.

end 2000) and is a leader in German electricity generation and distribution with a strong portfolio of international energy assets covering substantial areas of Europe.[21] E.ON supplies one-third of Germany's electricity requirements, has interests in energy utilities and co-operations in Sweden, Switzerland, the Netherlands, Italy, Poland, Russia, Latvia, Hungary, Austria, and the Czech Republic and its transmission grid stretches from Scandinavia to the Austrian Alps.[22] E.ON's transmission grid is interconnected with the Western European power grid (UCPTE) with links to the Netherlands, Austria, Switzerland, and the Eastern European powergrid (CENTREL).[23] With a transmission system length of over 37,000 km and a coverage area of nearly 170,000 square km, the grid covers more than one-third of the surface area of Germany.[24] The high-voltage network allows long-distance power transport at low transmission losses.[25]

E.ON's natural gas operation, including minority shareholdings, supplies almost one-third of the German market.[26] E.ON also owns a substantial German water utility that supplies gas to its customers.[27]

E.ON Energie has power plants throughout Europe.[28] E.ON's total generation capacity is balanced between bituminous coal (commonly known as "hard coal"), lignite, gas, nuclear energy, water, and CHP/renewables.[29] E.ON's use of coal is the backbone for its electricity

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[21] JA, p. 3; Pre-Filed Testimony of Dr. Johannes Teyssen, p. 5; I T.E. 27.
[22] JA, p. 3; Pre-Filed Testimony of Dr. Johannes Teyssen, pp. 3 and 5.
[23] Pre Filed Testimony of Dr. Johannes Teyssen, p. 6.
[24] Pre-Filed Testimony of Dr. Johannes Teyssen, p. 6. and Exhibit F; Informal Conference, slide no. 24.
[25] Pre-Filed Testimony of Dr. Johannes Teyssen, p. 6.
[26] Pre-Filed Testimony of Dr. Johannes Teyssen, p. 6. and Exhibit C; Informal Conference, slide no. 23.
[27] Pre-Filed Testimony of Dr. Johannes Teyssen, p. 6.
[28] See Pre-Filed Testimony of Dr. Teyssen, Exhibit G for a map indicating the location of power plants in Central Europe as of January 2001.
[29] See Pre-Filed Testimony of Dr. Teyssen, Exhibit H and Informal Conference, slide no. 19 for a chart showing E.ON's installed generation capacity by fuel source.

production. E.ON has a generation capacity from coal power plants of 11,871 MW, and E.ON burns 25 million metric tons of coal each year.[30]

Developing innovative and environmentally friendly technologies is a top priority for E.ON.[31] E.ON continues to update its power station technology, including improving materials, optimizing operations, and developing new methods and processes for coal-based generation such as circulating pressurized fluidized bed technology.[32] E.ON is active in applying the latest advances in power storage and distribution technology, including high temperature superconductors, new switching components, and improved batteries.[33] E.ON is developing and using renewables technology such as wind, biomass, and solar energy, as well as innovations like micro-energy technology such as fuel cells.[34]

As part of its environmental record, E.ON has taken several initiatives in its coal-fired power plants. All power plants are equipped with SO_2 scrubbers, NO_X reduction equipment, and precipitators. All power plants produce standardized residues used 100% in the construction industry. In addition, power plant efficiency has steadily improved to further reduce CO_2 emissions.[35]

E.ON recognizes the high skills of Powergen's, LG&E Energy's, LG&E's and KU's existing technical staffs and intends to preserve those staffs and the teamwork they have created following the proposed acquisition.[36] Powergen's management team will be responsible for the development and operation of E.ON's U.K.-U.S. energy business in accordance with E.ON's

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[30] Informal Conference Presentation, slide no. 20.
[31] JA, p. 8; Pre-Filed Testimony of Dr. Johannes Teyssen, p. 8.
[32] JA, p.8; Pre-Filed Testimony of Dr. Johannes Teyssen, p. 8.
[33] JA, p.8; Pre-Filed Testimony of Dr. Johannes Teyssen, p. 8.
[34] JA, p.8; Pre-Filed Testimony of Dr. Johannes Teyssen, p. 8.
[35] Informal Conference, slide no. 21.
[36] Pre-Filed Testimony of Dr. Johannes Teyssen, p. 7.

overall group strategy.[37] Additionally, LG&E and KU will continue to enjoy the technical abilities that resulted from the Powergen-LG&E Energy merger, further strengthened by E.ON's additional technical expertise.[38] LG&E and KU will benefit from E.ON's expertise and will continue to benefit from an association with Powergen.[39] Both companies have gained experience and expertise in their competitive marketplaces.[40]

Because of the range of nations and economies in which E.ON has operations, it has developed the technical expertise to deal with a wide variety of regulatory and economic environments. E.ON, through its predecessor companies, VEBA AG and VIAG AG, has over 75 years of experience in the utility business. This experience ensures E.ON has the technical ability to provide reasonable service to Kentucky ratepayers.[41] In addition, although not directly transferable into the United States marketplace at this time, E.ON has substantial technical expertise with regard to deregulation so that E.ON will be able to draw on that background if and when Kentucky were at some point to undergo restructuring.[42] It has developed expertise and experience in operating regulated and unregulated energy companies in competitive markets.[43] Most recently, E.ON has been operating as an energy utility in a deregulated environment in Germany.[44] This experience will prove valuable now, as well as during future periods of regulatory changes.

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[37] JA, pp. 8 and 16; Pre-Filed Testimony of Dr. Hans Michael Gaul, p. 19; I T.E. 48 and 95-96 (testimony of Dr. Erhard Schipporeit stating: "[o]ur intention is to delegate the management, the development, and operation of LG&E to Powergen, to the Powergen management" and "Powergen will have the responsibility for the management, for managing the business, and we, as the shareholder, will control the business, and therefore we have to decide on major issues, like dividend policy and major investment projects, on our behalf, but the management of the business is the responsibility of Powergen. This is a split of responsibilities, and I think we are convinced that this is a clear split and provides a clear corporate governing structure for our group.").
[38] JA, p. 8.
[39] JA, p. 9; I T.E. 123.
[40] JA, p. 9.
[41] Pre-Filed Testimony of Dr. Johannes Teyssen, p. 8; I T.E. 25-27.
[42] Pre-Filed Testimony of Dr. Johannes Teyssen, p. 8; I T.E. 25-27.
[43] JA, p. 7; I T.E. 25-27.
[44] JA, pp. 7-8; I T.E. 25-27.

E.ON stands behind the customer service and reliability commitments Powergen made in the last merger approved by this Commission[45] including the following:

- E.ON, Powergen, LG&E Energy, LG&E and KU commit that customers will experience no change in utility service due to the continuing existence and use of LG&E Energy Services, Inc.

- E.ON, Powergen, LG&E Energy, LG&E and KU commit to: (a) adequately funding and maintaining LG&E's and KU's transmission and distribution systems; (b) complying with all Commission regulations and statutes; and (c) supplying LG&E and KU customers' service needs.

- When implementing best practices, E.ON, Powergen, LG&E Energy, LG&E and KU commit to taking into full consideration the related impacts on levels of customer service and customer satisfaction, including any negative impacts resulting from workforce reductions.

- E.ON, Powergen, LG&E Energy, LG&E and KU commit that they will minimize, to the extent possible, any negative impacts on levels of customer service and customer satisfaction resulting from workforce reductions.

- LG&E and KU commit to periodically filing the various reliability and service quality measurements they currently maintain, to enable the Commission to monitor their commitment so that reliability and service quality will not suffer as a result of the acquisition.

- Powergen, LG&E Energy, LG&E and KU commit to notifying the Commission in writing 30 days prior to any material changes in their participation in funding for research and development. The possible changes include, but are not limited to, any change in funding equal to or greater than 5 percent of the previous year's budget for research and development. The written notification shall include an explanation and the reasons for the change in policy.[46]

- E.ON and Powergen commit to maintaining LG&E Energy's level of commitment to high quality utility service, and will fully support maintaining the LG&E and KU track record for superior service quality.

[45] JA, pp. 17-18; Pre-Filed Testimony of Dr. Hans Michael Gaul, pp. 1 and 23; Appendix A, Service Quality and Reliability, Items 1 through 8.

[46] See Section IX.D. for an explanation of why E.ON stands behind this commitment.

- E.ON, Powergen, LG&E Energy, LG&E and KU commit that LG&E and KU shall continue to operate through regional offices with local service personnel and field crews.[47]

C. E.ON has the Managerial Ability to Provide Reasonable Service Following the Proposed Acquisition.

E.ON has 75 years of utility managerial experience in Germany and 20 years of utility managerial experience in Europe.[48] E.ON's core skills include excellent asset management and strong customer service.[49] E.ON is Germany's third largest industrial group, employs over 180,000 people, and has a market capitalization of approximately €39.5 billion (approximately $35.7 billion as of April 6, 2001).[50] Upon completion of the proposed acquisition, E.ON will be the world's second largest utility company and the largest investor-owned utility based on pro forma 2000 electricity sales of 323 trillion watt hours.[51] E.ON (including its minority shareholdings) will have approximately 30 million electric and natural gas customers, and E.ON will have available resources up to €50 billion (approximately $45 billion as of April 6, 2001) with which to continue to pursue its strategic goals.[52]

E.ON now operates in Germany in a fully-liberalized power market and has successfully changed its corporate structure and managerial abilities according to the needs of a competitive environment.[53] The opening of the German electricity industry in 1998 and introduction of competition for all customer segments required E.ON to adapt its corporate structure and managerial abilities to a competitive environment. E.ON has responded by growing its customer base since 1998, largely because of its commitment to outstanding customer service, while at the

[47] The regional offices referred to in this commitment are the operating offices for LG&E and KU field divisions and do not include the local customer service offices. The latter are discussed in detail in Section VIII.C.
[48] I T.E. 25.
[49] I T.E. 25-26.
[50] Pre-Filed Testimonies of Dr. Hans Michael Gaul, p. 5 and Dr. Johannes Teyssen, pp. 4-5; Informal Conference, slide no. 8; I T.E. 28.
[51] Pre-Filed Testimony of Dr. Hans Michael Gaul, p. 6 and Exhibit B; Informal Conference, slide no. 9.
[52] Pre-Filed Testimonies of Dr. Hans Michael Gaul, p.6 and Dr. Rolf Pohlig, p. 6; I T.E. 32.

same time dealing with initial price decreases of between 30 and 60 percent because of liberalization.[54] E.ON's continuing experience in operating unregulated energy companies in competitive markets will be an asset in the event Kentucky deregulates its electricity market at some point in the future. Having said this, the proposed transaction is in no way contingent upon the opening of Kentucky's electricity market, and, assuming that it is approved by this Commission, will be carried to fruition whether the market remains regulated or not.[55]

E.ON attaches great importance to the skills and experience of the existing management and employees of Powergen and its subsidiaries, including LG&E Energy, LG&E, and KU.[56] Upon completion of the proposed acquisition, Powergen will operate as a separate subsidiary of E.ON.[57] Powergen's management team will be responsible for the development and operation of E.ON's U.K.-U.S. energy business in accordance with E.ON's overall group strategy.[58] The day-to-day responsibilities for LG&E's and KU's operational businesses will remain with Powergen and LG&E Energy.[59] E.ON will be responsible for the overall group strategy and therefore visit its subsidiaries on a regular basis.[60] The post-acquisition management of LG&E Energy, LG&E and KU is expected to include the existing management of all three entities, and,

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[53] JA, p. 7; I T.E. 26.
[54] Pre-Filed Testimony of Dr. Johannes Teyssen, p. 8; I T.E. 26-28 (Dr. Erhard Schipporeit testifying: "In terms of earnings, we are No. 4 in market cap, No. 7 in Germany. So we really have proven to manage our business well, I think.").
[55] See also I T.E. 247 (testimony of Mr. Victor A. Staffieri explaining with regard to whether Kentucky's electric industry be restructured or deregulated: "I think that we will operate effectively within either environment, and I think that we'll leave that to the administrative and responsible legislative bodies to make that determination."); Response to Data Request AG 2-1 ("The Applicants are prepared to achieve business success in a regulated or deregulated market. E.ON and Powergen both have experience in regulated and deregulated markets and are prepared and qualified to successfully operate and succeed in either market.").
[56] Pre-Filed Testimony of Dr. Hans Michael Gaul, p. 19; I T.E. 17-19.
[57] JA, p. 8; Pre-Filed Testimony of Dr. Hans Michael Gaul, p. 19; I T.E. 48-51.
[58] JA, p. 8; Pre-Filed Testimony of Dr. Hans Michael Gaul, p. 19; I T.E. 48-51.
[59] Pre-Filed Testimony of Dr. Hans Michael Gaul, p. 20; I T.E. 48-51 (Dr. Erhard Schipporeit testifying: "Our intention is to delegate the management, the development, and operation of LG&E to Powergen, to the Powergen management.").
[60] Pre-Filed Testimony of Dr. Hans Michael Gaul, p. 20; I T.E. 48-51.

to help facilitate this, a management retention incentive program is being implemented.[61] In addition, existing change-in-control agreements were revised following the Powergen-LG&E Energy merger.[62] As explained by Mr. Wallis when responding to a question posed by Ms. Raskin about the post-acquisition management of the utilities:

> The second thing was that Mr. Hartmann's view that the people assets of Powergen/LG&E were as important to him as the actual physical assets, and he was very keen that, whatever happened, that the management teams were kept together. That led us to a discussion as to how would we mange the combined outfit, and his ideas really, which I welcomed and agreed with, flowed along these lines. They were to say that minimum change creates minimum disturbance, and, if you've got minimum disturbance, you're more likely to retain staff than you are to lose them. So the whole design of the process was one of minimum change.[63]

Moreover, LG&E and KU will continue to operate through regional offices and existing systems with local service personnel and field crews available to respond to customers' needs.[64]

E.ON places great value on the managerial abilities of LG&E and KU and intends to maintain the resources for the utilities in the future.[65] E.ON stands behind the commitments of Powergen, LG&E Energy, LG&E and KU, including maintaining the highest level of management experience within LG&E Energy, LG&E, and KU, and providing an opportunity to broaden that experience by exchanging positions with other managers in Powergen's

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[61] I T.E. 103 (Dr. Erhard Schipporeit testifying: "... I would like to reiterate we want to keep the management on board. We are implementing retention programs. We are working on an incentive program for the present management team, and it's our intention to keep them on board, and we have not in mind any changes.").

[62] I T.E. 202-03 (Mr. E.A. Wallis testifying: "[Mr. Staffieri] has worked assiduously to try and make sure that the contracts that now stand have more flexibility in them so that, when this next transaction which we hope to take place does take place, we hope that there's not such a repetition of what happened last time."); I T.E. 210-11 (Mr. E.A. Wallis testifying: "We have the same concern that you have expressed, Mr. Gillis, and our view is that we have been through those contracts .... [and] .... we feel confident that the incidence of loss should be lower this time, and, also, Mr. Schipporeit said, E.ON themselves are looking at these processes and are very conscious of the need themselves to make sure people stay with us through this transition."); II T.E. 26-29 (Mr. Victor A. Staffieri testifying "Now there has to be a material change in the duties of the officer. That material change language is significantly more difficult to interpret on behalf of the executive than the former second trigger. So no longer do the executives have quite the flexibility that they had previously, and, in fact, now the company has a little more flexibility with respect to its officers than it had in the past, which is what gives us a little bit more comfort that, in the future, we won't have this kind of turnover.").

[63] I T.E. 181-82.

[64] JA, pp. 8 and 18.

[65] Pre-Filed Testimony of Dr. Hans Michael Gaul, pp. 20-21; I T.E. 17-19 and 103.

organization and E.ON's organization.[66] E.ON also stands behind Powergen's commitment to take an active and ongoing role in managing and operating LG&E and KU in the interest of customers, employees, and the Commonwealth of Kentucky.[67]

E.ON has solid financial, technical and managerial capabilities.[68] Dr. Gordon explained in his pre-filed testimony that "[t]he combination of E.ON and Powergen can provide a more diversified and more able provider of transmission and distribution and retail generation services by allowing LG&E and KU to draw on the managerial, operational, and financial resources of a larger, financially stronger firm."[69] The proposed acquisition ensures these companies will have the financial strength, resources, and technical and managerial experience to thrive in a changing marketplace so they may continue to provide reliable, low-cost service to their customers.[70]

IV. <u>Pursuant To KRS 278.020(5), The Proposed Acquisition And Transfer Of Ownership And Control Are Being Made In Accordance With Law, Are For Proper Purposes, And Are Consistent With The Public Interest</u>.

KRS 278.020(5)[71] provides that the Commission approve a proposed acquisition of control if the acquisition will be made in accordance with law, is for a proper purpose, and is consistent with the public interest.

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[66] Pre-Filed Testimony of Dr. Hans Michael Gaul, p. 22; I T.E. 48-51; Appendix A, Operations and Financials, Item 11. See Response to Data Request AG 2-7(g) and I T.E. 181 (stressing E.ON's view that human capital is as important as any other asset).

[67] Pre-Filed Testimony of Dr. Hans Michael Gaul, p. 22; Appendix A, Operations and Financials, Item 12.

[68] Pre-Filed testimony of Dr. Kenneth Gordon, p. 15.

[69] Pre-Filed Testimony of Dr. Kenneth Gordon, p. 16.

[70] Pre-Filed Testimony of Mr. E.A. Wallis, pp. 8-9

[71] KRS 278.020(5) states in relevant part:

> No individual, group, syndicate, general or limited partnership, association, corporation, joint stock company, trust, or other entity (an "acquirer"), whether or not organized under the laws of this state, shall acquire control, either directly or indirectly, of any utility furnishing utility service in this state, without having first obtained the approval of the commission . . . The commission shall approve any proposed acquisition when it finds that the same is to be made in accordance with law, for a proper purpose and is consistent with the public interest.

A. **The Proposed Acquisition And Transfer Of Ownership And Control Are Being Made In Accordance With Law.**

The proposed acquisition of Powergen by E.ON and the resulting transfer of ownership of and control over LG&E and KU will occur and be implemented in accordance with all applicable domestic and foreign laws.[72] Only after the Joint Applicants fulfill all requirements pertaining to the actual acquisition and satisfy all necessary conditions precedent to its implementation, will the Offer be made for E.ON to acquire Powergen and will ownership of and control over LG&E and KU ultimately be transferred. Because the Joint Applicants have applied or will apply for and expect to obtain all of the approvals discussed in this section, the proposed acquisition and transfer of ownership and control will be in accordance with all applicable domestic and foreign laws.

1. **How the Proposed Transaction Will Occur**

E.ON's and Powergen's Boards of Directors agreed on the terms of a recommended pre-conditional cash offer by E.ON for all of Powergen's issued and to-be-issued share capital. E.ON's Supervisory and Management Boards approved the proposed transaction on March 26 and April 8, 2001, respectively.[73] Powergen's Board of Directors approved the terms of the proposed pre-conditional offer on April 8, 2001.[74] The proposed acquisition must be implemented in accordance with the U.K. City Code on Takeovers and Mergers, and the Joint Applicants will ensure this is done.

As explained in the Joint Application, E.ON will acquire Powergen in one of two ways: (1) as the result of a takeover offer or (2) by a court-supervised scheme of arrangement pursuant

[72] E.ON's acquisition of Powergen will result in the indirect acquisition of Powergen's U.S. holding company (LG&E Energy) and public utility company subsidiaries (LG&E) and (KU).
[73] Pre-Filed Testimony of Dr. Hans Michael Gaul, p. 15. Under German corporate law, shareholder approval is currently not required for the proposed acquisition.
[74] Pre-Filed Testimony of Mr. E.A. Wallis, p. 6.

to Section 425 of the UK Companies Act 1985. Although it will not be known for some time still which way the proposed acquisition will occur, either way will be in accordance with law.[75]

Under the first of these scenarios, E.ON would be required to obtain 90% or more of outstanding Powergen shares, including ones already held by Powergen, or a lesser percentage within E.ON's discretion that is somewhere over 50%.[76] . Once E.ON, under this scenario, acquires at least 90% of the Powergen shares it does not hold on the date the offer is made, E.ON could compulsorily acquire any remaining Powergen shares held by shareholders who do not accept the takeover offer.[77] Immediately upon reaching the 90% level, and subject to the rights of dissenting shareholders to seek judicial relief, E.ON would serve compulsory acquisition notices on shareholders who had not accepted the offer.[78] Completion of the acquisition of those shares would take place approximately six weeks later.[79] One condition of E.ON's pre-conditional offer is that the company receive at least 90% shareholder acceptance, or such lesser percentage as E.ON may decide provided that this condition will not be satisfied unless E.ON has acquired or agreed to acquire at least 50% of the voting rights then exercisable at a general meeting of Powergen.[80]

Under the second scenario and pursuant to an agreement between Powergen and E.ON, E.ON could acquire Powergen via a court-sanctioned scheme of arrangement under Section 425 of the UK Companies Act 1985.[81] Powergen has agreed that it will not withhold its consent to

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[75] The decision regarding which acquisition structure to deploy will be made a few weeks before the last remaining pre-conditions to the offer are satisfied in light of the circumstances prevailing at the time. See Response to Data Request PSC 2-15.
[76] JA, p. 9.
[77] JA, p. 9.
[78] JA, p. 9.
[79] JA, p. 9.
[80] JA, pp. 9-10.
[81] JA, p. 10.

such an action unless it believes such an arrangement will materially delay the transaction.[82] In a court-supervised scheme of arrangement, Powergen would ask the court to summon a shareholders' meeting.[83] Assuming one were ordered, the arrangement would have to be approved by a majority in number of those voting and 75% in value of the members voting.[84] Assuming this approval were attained, the arrangement would require the court's discretionary sanction and would be effective only after an order sanctioning the arrangement were delivered to the Registrar of Companies.[85]

Shareholders accepting E.ON's offer to purchase Powergen's shares will be given an option of receiving loan notes to be issued by E.ON in place of some or all of the cash consideration they otherwise would receive.[86] The loan notes will be issued in multiples of £1 and fractional entitlements to loan notes will be disregarded.[87] The loan notes will bear interest at a rate of 50 basis points per annum below the six months sterling deposits LIBOR payable six months in arrears.[88] The loan notes will be transferable, but no application will be made for them to be listed or dealt in on any stock exchange.[89] After six months after the date of issuance, the loan notes will be redeemable in whole or in part on any interest payment date.[90] Any loan note not previously repaid, redeemed, or purchased will be repaid in full on the first interest payment date falling on or after the fifth anniversary of the date of issuance.[91] This loan note alternative allows certain U.K. resident taxable shareholders of Powergen to defer tax on the

[82] JA, p. 10.
[83] JA, p. 10.
[84] JA, p. 10.
[85] JA, p. 10.
[86] JA, p. 10.
[87] JA, p. 10.
[88] JA, p. 10.
[89] JA, p. 10.
[90] JA, p. 10.
[91] JA, p. 10.

capital gain realized from disposal of their shares,[92] and is within E.ON's discretion unless the aggregate shareholder elections for loan notes exceed £25 million.[93] The loan notes will not be registered under the U.S. Securities Act of 1933, as amended, under any relevant securities laws of any U.S. state or district, or under any relevant securities laws of any other country.[94] Accordingly, unless an exemption under such Act or laws is available, the loan notes may not be offered, sold, or delivered, directly or indirectly, in or into the U.S., Canada, Australia, or Japan.[95]

E.ON's proposed conditional purchase of Powergen's stock will not affect LG&E's and KU's outstanding securities and LG&E and KU will continue to issue their own preferred stock and debt as needed after the proposed transaction. Powergen presently holds 100% of the outstanding common stock of LG&E Energy, and LG&E Energy presently holds 100% of the outstanding common stock of LG&E and KU.[96] LG&E Energy's ownership of LG&E's and KU's stock will not change as a result of the consummation of E.ON's conditional offer to purchase the outstanding Powergen stock. LG&E Energy will not transfer the common equity stock in LG&E or KU, including as part of any corporate reorganization, without approval by this Commission, in accordance with the commitment Powergen and LG&E Energy made in Case No. 2000-095.[97]

2. **Regulatory Approvals That Are Conditions Precedent**

The Joint Applicants currently are seeking all approvals necessary to consummate the proposed acquisition and transfer of ownership and control in accordance with law.

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[92] Response to Data Request PSC 2-8(b).
[93] JA, pp. 10-11.
[94] JA, p. 11.
[95] JA, p. 11.
[96] Pre-Filed Testimony of Dr. Hans Michael Gaul, p. 21.
[97] Order Case No. 2000-095; See Pre-Filed Testimony of Mr. Victor A. Staffieri, pp. 4-7.

In addition to receiving the approval of this Commission, closing the pre-conditional offer is subject to the occurrence of these conditions precedent in the United States:

- The Joint Applicants must receive approval from the Federal Energy Regulatory Commission, and filed an application seeking such approval on June 12, 2001. An order is expected from the FERC no later than October 31, 2001.[98]

- The Joint Applicants must receive approval of the Virginia State Corporation Commission for the proposed transaction based on KU's operations in five Virginia counties as Old Dominion Power Company. The Joint Applicants filed an application seeking this approval on May 24, 2001, which was accepted for filing on June 12, 2001. A decision is expected from the Virginia Commission no later than October 31, 2001.[99]

- The Joint Applicants must receive approval from the U.S. Securities and Exchange Commission, and expect to file an application seeking such approval in August 2001. An order is expected from the SEC no later than December 31, 2001.[100]

- The Joint Applicants must confirm under the Exon-Florio provision of the 1950 Defense Production Act that the proposed transaction will not affect national security interests. The Joint Applicants expect to file an application to this effect in August 2001, and expect that no action will be taken under the Defense Production Act.[101]

- The Joint Applicants expect to make a filing under the 1976 Hart-Scott-Rodino Antitrust Improvements Act in August 2001, stating they do not believe the proposed transaction implicates federal antitrust law. The Hart-Scott-Rodino waiting period will end one month after the filing is made.[102]

- The Joint Applicants must receive such regulatory approval as may be required by the Tennessee Regulatory Authority. The Joint Applicants anticipate filing a letter advising that body of the status of the proposed acquisition in September 2001.[103]

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98 Response to Data Requests PSC 1-10 (b) and PSC 4-5.
99 Response to Data Requests PSC 1-10 (b) and PSC 4-5.
100 Response to Data Requests PSC 1-10 (b) and PSC 4-5.
101 Response to Data Requests PSC 1-10 (b) and PSC 4-5.
102 Response to Data Requests PSC 1-10 (b) and PSC 4-5.
103 Response to Data Requests PSC 1-10 (b) and PSC 4-5. There are about six KU customers that remain in Tennessee. This approval consists simply of advising the Tennessee Commission of the transaction, and the Joint Applicants expect to receive a letter from the Office of the General Counsel saying that regulatory approval is not required. II T.E. 40.

Closing the offer is subject to the following conditions precedent occurring abroad:

- The Joint Applicants must comply with all international tax requirements, and will do so.
- The proposed transaction requires clearance by the European Commission under the EC Merger Regulation.[104] It is expected that a filing will be made in late July 2001, and the waiting period will end one month after the filing is made, subject to EC public holidays.[105]
- The proposed acquisition requires confirmation from the U.K.'s Office of Gas and Electricity Markets.[106] This will be done in parallel with the Merger Regulation process.

3. Compliance with the U.S. Public Utility Holding Company Act

As noted above, the Joint Applicants must receive SEC approval as a condition precedent to the proposed transaction. After receiving that approval, E.ON, Powergen, LG&E Energy, LG&E and KU will be required to comply with PUHCA.[107]

On December 11, 2000, when LG&E Energy merged with a Powergen subsidiary, Powergen and the intermediate companies between Powergen and LG&E Energy became registered public utility holding companies under PUHCA. At the same time, LG&E Energy, LG&E and KU became part of Powergen's registered holding company system.

Subject to SEC approval of the proposed acquisition, it is expected that, after E.ON acquires Powergen, E.ON will become a registered public utility holding company under PUHCA and that LG&E Energy, LG&E and KU will become part of E.ON's registered holding company system.[108] It is anticipated that LG&E will be required to file with the SEC an analysis demonstrating that it should remain a combined electric and gas utility after E.ON's acquisition

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104 Pre-Filed Testimony of Mr. E.A. Wallis, p. 6.
105 Response to Data Requests PSC 1-10(b) and PSC 4-5.
106 Pre-Filed Testimony of Mr. E.A. Wallis, p. 6; Responses to Data Request PSC 1-10(b) and PSC 4-5.
107 E.ON agrees with the SEC that the goals of the 1935 Act have in large part been accomplished, that PUHCA should be repealed, and that any residual regulations thereunder should be transferred to another U.S. federal regulatory agency. Powergen, LG&E Energy, LG&E, and KU agree. See Response to Data Request PSC 1-16.
108 Pre-Filed Testimony of Dr. Rolf Pohlig, pp. 2, 6 and 10; I T.E. 91. See Response to Data Request PSC 1-10(c).

of Powergen, and that the SEC will determine that retention of the gas utility system is appropriate.[109] Powergen will deregister with the SEC and will be granted the regulatory status of a FUCO under PUHCA because it no longer legally owns any operating utility in the United States[110] and no longer receives dividends from an operating utility in the United States. Based on discussions with the SEC staff, E.ON and Powergen expect Powergen will qualify as a FUCO while Powergen is responsible for the operations of LG&E and KU.[111]

Just as with Powergen and its subsidiary companies, E.ON as a registered holding company will be subject to certain statutory and administrative requirements under PUHCA. Among these are that the SEC approve in advance certain securities issuances, the sale and acquisition of utility assets in the United States, and the acquisition of other businesses. PUHCA also limits the ability of registered holding companies and their subsidiaries to engage in various businesses by limiting their activities to utility operations and activities needed to support the same, energy-related businesses, exempt wholesale generators, foreign utility companies, and telecommunications.

As a result of registration, E.ON anticipates it will be required to divest various non-utility assets, including its specialty chemicals and real estate subsidiaries.[112] E.ON will dispose of certain non-utility assets in the next three to five years after closing as may be required by the SEC.[113] As with the current Powergen holding company, the SEC will have jurisdiction over E.ON's registered holding company and will, among other things, place certain restrictions on affiliate transactions, including the holding company's ability to provide services to the utility

[109] See Response to Data Request PSC 1-13.
[110] Pre-Filed Testimony of Dr. Rolf Pohlig, p. 10; I T.E. 91.
[111] I T.E. 91 and 226. See Response to PSC 2-7.
[112] Pre-Filed testimony of Dr. Rolf Pohlig, p. 7; I T.E. 133-34 and 226.
[113] Pre-Filed Testimony of Dr. Rolf Pohlig, p. 2, 3, 7 and 8; Response to Data Requests AG 2-11 and PSC 3-9; I T.E. 133.

operating subsidiaries, LG&E and KU, and the allocation of costs to and from utility operating companies within the holding company structure.[114]

LG&E's and KU's on-going operations will not be affected by this – or any other aspect of – the proposed transaction. For example, the Joint Applicants will continue to use the existing service company ("LG&E Energy Services, Inc.") to provide LG&E and KU with administrative, management, and support services pursuant to an agreement currently in place among the companies.

This aspect of the proposed transaction also will not affect this Commission's state regulatory authority over LG&E and KU. The Joint Applicants commit that they will not assert that the SEC's jurisdiction legally preempts this Commission from disallowing recovery in retail rates of the cost of goods and services that LG&E or KU obtain from or transfer to an associate, affiliate, or subsidiary in the same holding company system.[115] This assertion also shall apply to any claim under Ohio Power v. FERC decision.[116] However, LG&E and KU shall retain the right to assert that the charges are reasonable and appropriate.[117]

Furthermore, E.ON, Powergen, LG&E Energy, LG&E and KU commit to provide this Commission with thirty days' prior notice of any SEC filing that proposes new allocation factors. The notice need not be in the precise form of the final filing but will include, to the extent information is available, a description of the proposed factors and the reasons supporting such factors.[118] E.ON, Powergen, LG&E Energy, LG&E and KU commit to make a good faith attempt to resolve differences, if any, with this Commission in advance of the SEC filing.[119]

[114] Pre-Filed Testimonies of Mr. S. Bradford Rives, pp. 4-5 and Mr. Michael S. Beer, p. 7.
[115] Appendix A, Operations and Financials, Item 3.
[116] Appendix A, Operations and Financials, Item 3.
[117] Pre-Filed Testimony of Mr. Michael S. Beer, p. 6; Appendix A, Operations and Financials, Item 3.

B. **The Proposed Acquisition Is For Proper Purposes.**

The proposed acquisition has three purposes: (1) to obtain an expandable strategic position for E.ON through Powergen in the United States; (2) to achieve increased strength and stability for LG&E and KU; and (3) to provide value to shareholders. All three purposes are indisputably proper.

1. **Obtaining an Expandable Strategic Position for E.ON**

With regard to the first purpose, E.ON seeks to acquire Powergen and, through that acquisition, ownership of and control over LG&E and KU so that it may achieve a platform for future U.S. expansion here in Kentucky.

When Powergen acquired LG&E Energy last year, its vision was to create a leading electricity and gas utilities business in the U.K. and the United States.[120] Powergen took a major step toward achieving that vision through its acquisition of LG&E Energy, but soon realized that its growth would be slower than anticipated if it were to pursue its intended acquisitions using only its available resources.[121] Discussions with E.ON revealed that it had a similar vision, to create a leading global pure-play utility company with operations in Europe and the United States.[122] The difference between the two companies is that E.ON, as the largest investor-owned utility in the world, has approximately $45 billion in available resources with which to pursue its strategic goals.[123] This financial strength means that additional future expansion and growth within the United States energy market are likely to happen far more expeditiously.[124]

[118] Appendix A, Operations and Financials, Item 5.
[119] Pre-Filed Testimony of Mr. Michael S. Beer, p. 7; Appendix A, Operations and Financials, Item 5.
[120] Pre-Filed Testimony of Mr. E.A. Wallis, pp. 3-4.
[121] Wallis, p. 3; I T.E. 198-201.
[122] Pre-Filed Testimony of Mr. E.A. Wallis, pp. 3-4.
[123] JA, p. 13; Pre-Filed Testimonies of Dr. Hans Michael Gaul, p. 6 and Dr. Rolf Pohlig, pp. 3 and 6; I T.E. 32. This sum is calculated as of April 6, 2001.
[124] Pre-Filed Testimonies of Mr. E.A. Wallis, pp. 3-4 and Dr. Paul A. Coomes, p. 1.

E.ON's substantial financial resources, energy business experience, and commitment to base the U.S. energy operations of the combined E.ON-Powergen-LG&E Energy group in Louisville,[125] will help Louisville to become rapidly an integral part of a very large and strong U.S. energy presence. E.ON's decision to situate its point-of-entry into the U.S. energy market in Kentucky gives the Commonwealth an uncommon and exceptional opportunity that should result in national and international recognition for Kentucky as the center of a vital and ever-important industry.[126] As is explained in Section IV.C. of this brief, as E.ON expands to become one of the world's top independent electric and gas businesses, increased benefits will flow to the Commonwealth and its citizens.[127]

2. Increased Strength and Stability for LG&E and KU

An additional purpose for the proposed acquisition and transfer of ownership and control is for LG&E and KU to become stronger by benefiting from E.ON's substantial financial strength and exceptional access to financial markets.[128]

When Powergen acquired LG&E Energy last year, LG&E and KU became part of a larger, stronger entity with an international presence and gained an increased ability to serve their customers in an ever-changing energy environment.[129] Since then, LG&E and KU have continued to provide customers with exceptionally low-cost and reliable service. Also since

[125] JA, pp. 13-14; Appendix A, Other Commitments and Assurances, Item 1. E.ON has agreed to base its U.S. energy headquarters in Louisville until at least December 11, 2010. See I T.E. 22 (testimony of Dr. Erhard Schipporeit stating: "We are committed to keep the headquarters of LG&E in Kentucky, in Louisville, Kentucky, and the KU headquarters in Lexington, and, on top of this, it's our intention to make Louisville as the center of our future energy operations in the U.S. in Louisville.").
[126] Pre-Filed Testimony of Dr. Hans Michael Gaul, pp. 16 and 21.
[127] JA, p. 14; Pre-Filed Testimony of Dr. Hans Michael Gaul, pp. 11-12.
[128] As of April 6, 2001, E.ON had available a market capitalization of approximately $35.7 billion and resources of approximately $45 billion with which to pursue its goals of expansion. See JA, p. 13; Pre-Filed Testimonies of Dr. Hans Michael Gaul, pp. 5 and 6, Dr. Rolf Pohlig, pp. 3 and 6 and Dr. Kenneth Gordon, pp. 4 and 15; Informal Conference, slide no. 8; I T.E. 32.
[129] JA, p. 20.

then, though, Powergen has recognized that it would be unable to expand its U.S. presence as quickly as it wished and entered into the proposed transaction with E.ON.[130]

The proposed acquisition and transfer of ownership and control will ensure that LG&E and KU remain part of a merged entity with the size and resources to continue to grow, as well as the experience and expertise required to succeed in a rapidly-evolving energy industry.[131] Credit agencies are expected to upgrade LG&E and KU bond ratings, thereby lowering their costs of capital.[132] Dr. Gordon explained in his pre-filed testimony, by recently placing LG&E and KU's debt securities on credit watch for potential upgrade, Moody's, Standard & Poor's, and Fitch already have begun to recognize the potentially positive credit quality implications for LG&E and KU from having a financially stronger parent company.[133] In short, E.ON's financial strength will provide LG&E and KU with greater stability, which will in turn allow them to continue to focus on their primary goal: providing safe, reliable, and highly-affordable service to their customers.[134]

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[130] Pre-Filed Testimony of Mr. E. A. Wallis, p. 3; I T. E. 198-201.

[131] JA, p. 14.

[132] Pre-Filed Testimonies of Dr. Hans Michael Gaul, p. 17 and Dr. Rolf Pohlig, p. 6; I T.E. 88 and 123. See also Pre-Filed Testimony of Dr. Kenneth Gordon, p. 4 (explaining: "It is my understanding that the major rating agencies expect E.ON and Powergen to retain strong investment grade credit ratings and remain financially stable. Most importantly, it is my understanding that E.ON's proposed acquisition of Powergen's shares could lead to improved credit ratings for LG&E and KU, which could allow greater access to capital markets at reasonable costs, which would provide a meaningful and concrete benefit over time—a lower cost of debt capital."); I T.E. 88 (testimony of Dr. Erhard Schipporeit explaining: "[W]e can expect further reductions in the midranges, further reductions of the financial costs of LG&E, because of the better rating of the E.ON group and, under the umbrella of the E.ON group, they can and will enjoy a better rating and reduced financial costs which, at the end, via the earnings sharing mechanism will flow to the ratepayers of Kentucky."); Response to Data Request AG 1-8. (stating: "E.ON's financial strength and strong credit ratings will ensure that LG&E and KU have access to financial resources including capital markets to continue to provide reliable services to their customers. It is anticipated that the strong credit ratings of E.ON will improve the credit ratings of LEC, LG&E and KU and thereby lower the cost of capital for those companies.").

[133] Pre-Filed Testimony of Dr. Kenneth Gordon, p. 4. See also II T.E. 36 (testimony of Mr. Victor A. Staffieri stating: "[A]lready, our debt instruments are on CreditWatch for an upgrade as a result of the potential closing of this transaction, and that means a lot for consumers over time, because our interest rates and our cost of borrowings should decline, and that, of course, will be reflected in the earnings sharing mechanism.").

[134] I T. E. 37.

3. Value for Shareholders

The third proper purpose of the proposed acquisition and transfer of ownership and control is that it will bring value to shareholders.

E.ON's and Powergen's Boards of Directors have agreed upon the terms of a recommended pre-conditional cash offer to be made through Goldman Sachs International on behalf of E.ON for all of Powergen's issued and to-be-issued share capital.[135] The offer will be made in accordance with the terms and conditions of the Offer Announcement, which states that E.ON will pay £7.65 (approximately $11.00) for each outstanding Powergen share and £30.60 (approximately $44.00) for each outstanding Powergen American Depository Receipt (representing four Powergen shares).[136] The per share price represents a premium of 8.4% relative to the closing price on April 6, 2001 (three days before the offer announcement), 25.8% relative to the closing price on January 16, 2001 (the last day of trading before Powergen confirmed it was in preliminary acquisition discussions with E.ON), and 35.2% relative to the average price of six months preceding January 16, 2001.[137] Investor reaction generally has been favorable regarding the premium being paid by E.ON for Powergen.[138]

C. The Proposed Acquisition Is Consistent With The Public Interest.

The proposed acquisition and transfer of ownership and control are consistent with the public interest. The term "consistent with the public interest" is sufficiently broad to encompass the interests of LG&E and KU, ratepayers, shareholders, utility employees, Kentucky's citizens (including corporate citizens), and Kentucky's government. Examining the facts and

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[135] JA, p. 1.

[136] JA, pp. 1-2; Pre-Filed Testimony of Dr. Rolf Pohlig, p. 1. E.ON will acquire Powergen's shares with current liquid assets and lines of credit. Pre-Filed Testimony of Dr. Rolf Pohlig, p. 6.

[137] Pre-Filed Testimony of Dr. Rolf Pohlig, pp. 1-2.

[138] See Pre-Filed Testimony of Dr. Rolf Pohlig, p. 4.

circumstances of that proposal in the context of the stated interests demonstrates unequivocal support for a determination that the proposal is consistent with the public interest.

1. Decision and Commitment to Base U.S. Energy Operations in Louisville

Of benefit to the Commonwealth and its citizens are E.ON's decision and commitment to base the U.S. energy operations of the combined E.ON-Powergen-LG&E Energy group in Louisville.[139] While LG&E Energy and LG&E will continue to maintain their headquarters in Louisville, KU will continue to maintain its headquarters in Lexington.[140] This gives Kentucky an uncommon and exceptional opportunity that should result in national and international recognition for Kentucky as the center of a vital and ever-important industry.[141]

Mr. Staffieri explained the benefits of this opportunity in his hearing testimony:

> [T]he commitment that Louisville, Kentucky will serve as the headquarters of E.ON's [U.S.] energy business is also very important, because that means a couple of things. One, there will be some investment in human resources here, so that we have the capability to serve as that kind of headquarters by E.ON . . . [A]s acquisitions take place, there is a tendency to migrate many of the staff functions to the headquarters, and so I think there's a potential there, as we go through our acquisitions, for adding additional economic jobs, and tax revenue, tax basis to the Commonwealth of Kentucky . . . [T]here's no question that E.ON, as the second largest energy company in the world in the wake of this transaction, has got enormous resources and technical resources that we should be able to take advantage of here in Kentucky to even enhance the service to our customers beyond what it is today, particularly even in terms of reliability, engineering, expertise, R&D expertise. We'll be able to call upon all of that, the resources of a much, much larger company. . . [T]here also is in store for us the potential that, in the event there is another acquisition and there are synergies, that, too, will redound to the benefit of consumers in Kentucky. We have an earnings sharing mechanism here. That earnings sharing mechanism provides real time analysis. It allows us, to the extent we are getting more savings than – or we're spending less money than the Commission believes is appropriate, it falls to the bottom

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[139] JA, pp. 13-14 and Pre-Filed Testimony of Dr. Hans Michael Gaul, p. 21. E.ON fully accepts and agrees to Powergen's commitment to maintain these headquarters in Kentucky and to maintain the headquarters of Powergen's U.S. operations in Louisville for ten years from the date of the consummation of the Powergen-LG&E Energy merger. E.ON thus has agreed to base its U.S. energy headquarters in Louisville until at least December 11, 2010. See also I T.E. 22, 84, 231 and 260.

[140] JA, p. 14; Pre-Filed Testimony of Dr. Hans Michael Gaul, pp. 16 and 21.

[141] Pre-Filed Testimony of Dr. Hans Michael Gaul, pp. 16 and 21; Supra Section IV.B.

line, and it's returnable to consumers. So, I mean, there's that potential that, in a subsequent merger, there are synergies that Kentucky consumers can share in.[142]

As E.ON expands its U.S. operations to become one of the world's top independent electric and gas businesses, Louisville will rapidly become an integral part of a very large and strong U.S. energy presence. In addition, existing and new LG&E Energy, LG&E and KU employees will have the opportunity to work as part of a major global energy corporation. Employees will remain at the fore of the ever-more-competitive U.S. electricity industry while E.ON's growing foreign operations may provide opportunities for LG&E Energy employees abroad.[143]

2. <u>Financial Strength for LG&E and KU</u>

Also as described in Section IV.B. above, LG&E and KU will become stronger as a result of the proposed acquisition and transfer of ownership and control by benefiting from E.ON's substantial financial strength and exceptional access to financial markets.

An immediate and direct benefit is that Powergen's, LG&E's, and KU's financial strength will be enhanced and the companies will have better access to capital markets.[144] As stated already, there is good reason to expect that, as a result of the proposed transaction, credit agencies will upgrade LG&E and KU bond ratings, thereby lowering their costs of capital.[145] In fact, as Dr. Gordon explained in his pre-filed testimony, by recently placing LG&E and KU's debt securities on credit watch for potential upgrade, Moody's, Standard & Poor's, and Fitch

[142] II T.E. 36-38.
[143] Pre-Filed Testimony of Dr. Hans Michael Gaul, p. 17; I T.E. 50 and 87; Appendix A, Operations and Financials, Item 11.
[144] Pre-Filed Testimony of Dr. Hans Michael Gaul, p. 17. <u>See also</u> Pre-Filed Testimony of Dr. Kenneth Gordon, p. 15 (stating that having E.ON as a parent will provide LG&E and KU with better access to capital markets, which will allow utility customers in Kentucky to receive net benefits from the acquisition).
[145] Pre-Filed Testimonies of Dr. Hans Michael Gaul, p. 17 and Dr. Rolf Pohlig, p. 6; I T.E. 88 and 123. <u>See also</u> Pre-Filed Testimony of Dr. Kenneth Gordon, p. 4 (explaining: "It is my understanding that the major rating agencies expect E.ON and Powergen to retain strong investment grade credit ratings and remain financially stable. Most importantly, it is my understanding that E.ON's proposed acquisition of Powergen's shares could lead to

already have begun to recognize the potentially positive credit quality implications for LG&E and KU from having a financially stronger parent company.[146]

3. **Economic Development**

Among the important benefits expected to flow to the Commonwealth as E.ON expands to become one of the world's top independent electric and gas businesses are the economic development opportunities that will be presented and will inure to the benefit of all of Kentucky. At the hearing, Mr. Staffieri explained the economic development opportunities related to the proposed acquisition by stating:

> The other thing that I'd like to bring to the Commission's attention are the economic development opportunities . . . . During the course of the discussions with the Governor, you know, the Governor is very interested in economic development, and, on the spot, Dr. Hartmann offered, "Well, you know, if you think that Kentucky is such a great place, I can open some doors for you in Germany for companies who are interested in perhaps centering some of their businesses here in Kentucky." And I know that the staffs of the Governor and E.ON, the Chairman's Office, are working to put together a program where Kentucky can showcase its capabilities, its workforce, its tax structure, its government, and showcase that in front of a whole host of high-ranking businessmen at the invitation of Dr. Hartmann. So those are the kinds of economic developments. We now have a foothold on continental Europe that should allow us to bring perhaps more companies to Kentucky.[147]

E.ON's resources, combined with this Commission's oversight of and control over LG&E's and KU's rates, should result in LG&E's and KU's continued provision of exceptionally reliable and low-cost energy.[148] Dr. Coomes explained in his pre-filed testimony

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improved credit ratings for LG&E and KU, which could allow greater access to capital markets at reasonable costs, which would provide a meaningful and concrete benefit over time—a lower cost of debt capital.").

[146] Pre-Filed Testimony of Dr. Kenneth Gordon, p. 4.

[147] II T.E. 38.

[148] Pre-Filed Testimony of Dr. Paul A. Coomes, p. 1. Using the Memphis Light Gas and Water Division electricity and natural gas rate comparison report and the Edison Electric Institute electricity rate comparison report, Dr. Coomes studied cost data for Louisville, Lexington, and twelve comparison cities. Dr. Coomes observed that Lexington and Louisville had the lowest electricity rates of the fourteen markets studied for all customer types and at all volumes of usage. Comparable natural gas costs were available for seven of these markets and, of those, Louisville had the second lowest rates for commercial and residential customers and the third lowest rates for large industrial customers. Dr. Coomes also noted in his testimony that the American Chamber of Commerce Research Association, which produces a quarterly cost-of-living index for U.S. cities and towns, reported last year that utility

that key factors in the location of certain industries, particularly manufacturing firms, and are an important component of a region's cost of living, affecting the area's ability to attract and retain population and its human capital.[149] Kentucky has been and continues to be very attractive for energy-intensive industries, and it is important from an economic development perspective that this remains the case. Dr. Coomes' research has shown that many of Kentucky's most prominent and important companies are located here because the cost of electricity and natural gas are among the lowest in the United States, and because LG&E's and KU's capacity, reliability, and service are so attractive.[150] The proposed transaction is likely to ensure that this remains the case.

Dr. Coomes also noted that a fast growth strategy on the part of E.ON, centered in Louisville, could have lucrative consequences for many other regional firms and their employees.[151] Dr. Coomes explained that headquarters of major corporations typically employ many professional people and pay well above the community average. Headquarters operations let major contracts with financial, marketing, public relations, advertising, legal, engineering, and consulting firms and, while Louisville-based professional service firms compete nationally

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costs (including energy) were 5% below the national average in Louisville and 13% below the national average in Lexington. Pre-Filed Testimony of Dr. Paul A. Coomes, pp. 5-6. The Memphis Light Gas and Water Division report was JA Hearing Exhibit No. 2.

[149] Pre-Filed Testimony of Dr. Paul A. Coomes, p. 1.

[150] Pre-Filed Testimony of Dr. Paul A. Coomes, p. 4. Manufacturing firms, of which there are hundreds of detailed industrial categories, are very energy-intensive. Dr. Coomes obtained national data on the energy usage of each detailed manufacturing industry and ranked the industries by energy usage and intensity. At or near the top of the rankings were many industries prominent in our regional economy. Dr. Coomes also examined data on electricity consumption by LG&E's twenty-five largest industrial customers and observed that all but a few of them fell into the industrial classifications ranked nationally as most energy intensive. Noting that these large local manufacturers are among the most prominent employers and taxpayers in Kentucky, Dr. Coomes observed in his testimony that they have located and thrived here in large part due to our low energy costs. Dr. Coomes also noted that Toyota and North American Stainless, two of KU's largest customers, are near the top in terms of industry energy intensity nationally.

[151] Pre-Filed Testimony of Dr. Paul A. Coomes, p. 8.

for LG&E Energy's business, they have the built-in advantage of having offices only a few blocks away.[152]

4. E.ON's Adoption of Powergen's Commitments and the Operation of LG&E's and KU's Earnings Sharing Mechanisms

The proposed transaction also is rendered consistent with the public interest due to the combined effect of E.ON's adoption of the commitments Powergen made in Case No. 2000-095 and the operation of LG&E's and KU's Earnings Sharing Mechanisms ("ESMs"). This is especially true given the difficulty that exists demonstrating conclusively the level of savings that may in time be achieved as a result of any proposed transaction.[153]

Dr. Kenneth Gordon explained in his pre-filed testimony: "[I]t is often not practical to attempt to demonstrate conclusively the level of savings that will be achieved from a merger or acquisition. Even after the merger is completed, it will be impossible to know conclusively what would have occurred if the merger had not been completed." When this is the case, incentive-based alternative ratemaking approaches – likes LG&E's and KU's ESMs – can be very advantageous:

> One of the principal advantages of incentive-based alternative ratemaking approaches, such as an earnings-sharing mechanism, is that the Commission need not resolve these sorts of questions. Alternative ratemaking approaches provide strong incentives for the utility on the one hand, while coping with imperfect information and uncertainty on the other. Given the combination of the earnings-sharing mechanism and the "Appendix A" to the Docket No. 2000-095 merger order, which, in effect, is a detailed "code of conduct" that LG&E/KU and their parent companies have agreed to follow, it is clear that the Commission will have sufficient authority to regulate LG&E and KU in the future. Moving away from these arrangements that are already in place would not be likely to be beneficial to utility customers.[154]

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152 Pre-Filed Testimony of Dr. Paul A. Coomes, p. 8.
153 I T.E. 41 (Mr. Victor A. Staffieri testifying that "We'll do what is fair and equitable, but we can't anticipate exactly how it will play out.").
154 Pre-Filed Testimony of Dr. Kenneth Gordon, p. 9.

The Commission's continuing ability to regulate LG&E and KU following consummation of the proposed transaction – due in large part to E.ON's adoption of Powergen's merger commitments and the LG&E and KU ESMs – will ensure two things: (1) the proposed acquisition and transfer of ownership and control will have no impact on the benefits provided to customers as a result of the LG&E Energy-KU Energy merger[155] and (2) any savings that might occur at some future point for any reason will be shared with customers through the operation of LG&E's and KU's ESMs to the extent they are not offset by changes in the costs of providing service.[156]

Although the proposed acquisition and transfer of ownership and control are not dependent on cost savings and will not create synergies or additional savings like those created in the LG&E Energy-KU Energy merger, there is a possibility that customer benefits could occur at some point in the future at the utility level as a result of the proposed transaction.[157] As E.ON expands over the long-term to become one of the world's top independent electric and gas businesses, the cross-fertilization in terms of technologies and processes that E.ON may be able to bring to LG&E and KU may provide an opportunity for further operating efficiencies and

[155] Specifically, the Joint Applicants commit that customers will continue to receive merger surcredit benefits, merger dispatch benefits, and lower fuel costs through the operation of the utilities' fuel adjustment clauses – all of which are currently received as a result of the merger approved in Case No. 97-300. Pre-Filed Testimony of Mr. Michael S. Beer, p. 4; Appendix A, Operations and Financials, Items 6 and 7. See also I T.E. 262 (testimony of Mr. Victor A. Staffieri stating that nothing changes the condition of the LG&E Energy-KU Energy merger that in the middle of the fifth year after the acquisition became final, the companies would come to the Commission to begin a process for determining the merger surcredit for years six through ten); Response to Data Request MHNA 1-9 (explaining that E.ON stands behinds Powergen's Case No. 2000-095 commitment that benefits customers currently receive as a result of the merger approved in Case No. 97-300 will not be affected).

[156] For LG&E's natural gas rates, to the extent savings exist and are not otherwise offset by changes in the cost of providing service, they could be included in the calculation of the annual information filing proposed by LG&E in December 2000 for the Commission's review or such other method as the Commission may approve in the pending investigation into alternative methods of regulating LG&E's natural gas service. In that regard, the savings, if they exist, will offset any additional increases in the cost of providing natural gas service from items such as LG&E's gas main replacement program. Pre-Filed Testimony of Mr. Michael S. Beer, pp. 3-4.

[157] JA, p. 20. See Pre-Filed Testimony of Dr. Kenneth Gordon, p. 9 (stating: "While it is likely that utility customers will benefit, over time, from E.ON's acquisition of Powergen, the transaction is not likely to result in sudden or dramatic changes that would be noticeable by customers."). See also II T.E. 37.

synergies.[158] While the precise nature of corporate transformation following a merger and of E.ON's expansion in the United States are impossible to predict upfront, given the resources that the combined E.ON-Powergen will be able to bring to bear, additional benefits to utility customers may be possible over time.[159] There also is a possibility that any future acquisitions by E.ON of contiguous U.S. utilities could result in cost savings that ultimately could reduce rates for Kentucky ratepayers.[160] During the hearing Mr. Staffieri explained that the ESMs will allow LG&E and KU the customers to share in any savings in Kentucky. He testified:

> [U]nder the earnings sharing mechanism, there's already in place something that will allow customers at least to share in the benefits even today. . . . If there are savings in Kentucky as a result of synergies, then they should flow through our accounts and they should be captured by the earnings sharing mechanism. . . . You cannot have savings in Kentucky that don't flow through the ESM. . . . [I]f they hit our books and records of account, they will go through the ESM.[161]

E.ON's adoption of the Powergen commitments and the operation of the ESMs will ensure that any savings in Kentucky from the proposed acquisition or any future acquisition will be shared with LG&E and KU customers.

5. **<u>Best Practices Will Continue and E.ON Will Contribute</u>**

As explained at the hearing, E.ON believes the pursuit of best practices by Powergen and LG&E Energy continues to be important. Dr. Schipporeit testified that:

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[158] Pre-Filed Testimony of Dr. Kenneth Gordon, p. 16.
[159] Pre-Filed Testimony of Dr. Kenneth Gordon, p. 16.
[160] JA, p. 20; Pre-Filed Testimonies of Dr. Hans Michael Gaul, pp. 11-12 and Mr. Michael S. Beer, p. 2. This statement is made with the understanding that E.ON is adopting the commitment Powergen made in Case No. 2000-095 to discuss with this Commission the issue of whether any synergies might result from such a future acquisition over which the Commission does not have jurisdiction, and whether savings might flow from it that could be shared appropriately with Kentucky ratepayers. JA, pp. 14 and 20 and Pre-Filed Testimonies of Dr. Hans Michael Gaul, p. 21 and Mr. Victor A. Staffieri, pp. 4-7; I T.E. 34 and 37-40. Although E.ON will not make a formal filing to this effect, it commits to discuss the sharing of such possible savings with the Commission. <u>See</u> Appendix A, Other Commitments and Assurances, Item 7. <u>See also</u> I T.E. 37 (testimony of Dr. Erhard Schipporeit explaining: "We are prepared to make this commitment that, in the event of a subsequent merger over which the Commission would not have jurisdiction, we commit, together with Powergen, to discuss with the Commission the issue of whether there would be any synergies resulting from that merger that should be appropriately shared with Kentucky ratepayers, and this would mean a fair split of synergies.").
[161] II T.E. 41-43.

> [W]e know the principles of their value delivery process and of their best practice process, and we share the principal idea of this procedure because we have the same experience in our group, and this is an appropriate way to approve the efficiency of the group, to safeguard the future, and to bring the company forward, and to reduce costs at the end, too.[162]

Following consummation of the proposed transaction, Powergen will oversee this pursuit, while E.ON's resources will be made available to assist in the endeavor.[163] In addition, E.ON will share best practices with Powergen and LG&E:

> [T]o exchange ideas in asset management and customer service, and, from, our German experience, in our group, the E.ON group, we have a substantial part of experience . . . which we hope can contribute to Powergen and LG&E, in particular.
>
> . . .
>
> So our management skills which we have developed in the past will provide a sound basis for exchanging experience, for exchanging best practice with LG&E and Powergen management in the future, and our technical skills . . . are proven in the past because we are involved in almost all the power generation technologies, like nuclear, water, coal, and also renewable energy business. So we have a broad scale of management and technical expertise in all those areas which I mentioned. So, together with our financial ability to run the business, we think we can contribute substantially to hopefully improve also the efficiency and the customer and the level of satisfaction of the customers of LG&E.[164]

This Commission encouraged the pursuit of best practices in Case No. 2000-095, and the proposed acquisition and transfer of ownership and control will help the Joint Applicants proceed with this. E.ON and Powergen believe that current initiatives are placing LG&E and KU at the forefront of world's best practices, and no more broad based initiatives are anticipated. However, the application of best practices is dynamic and focus on best practices will continue.

[162] I T.E. 110.
[163] I T.E. 113.
[164] I T.E. 25 and 27.

6. Giving Back to the Communities LG&E and KU Serve

Just as E.ON appreciates and values LG&E's and KU's historical commitment to providing exceptional customer service, E.ON is mindful of the utilities' charitable, civic, and educational investments and undertakings in the communities they serve. LG&E and KU employees perform significant amounts of volunteer work within their communities. As was described during the LG&E Energy-KU Energy merger, LG&E Energy and LG&E employees give strong support every year to Metro United Way, Fund for the Arts, Crusade for Children, and countless other charitable and civic causes. And every year KU employees give strong support to Kentucky Educational Television, the Kentucky Independent College Foundation, the Lexington Arts and Cultural Council, the Lexington Children's Theater, Volunteers of America, and United Way of the Bluegrass. These activities have remained unchanged since the LG&E Energy-KU Energy merger. Appreciating this and in the interest of preserving these relationships for the benefit of customers and the Commonwealth as a whole, E.ON commits that LG&E's and KU's support and promotion of economic development, community involvement, and charitable giving will continue at levels at least comparable to current ones.[165]

Mindful that the health and growth of its investment depends directly upon the health and growth of the economy in the areas it serves, E.ON will encourage LG&E and KU to continue to work closely with state and local economic development agencies to attract and retain businesses and jobs in Kentucky.[166] E.ON also has agreed that LG&E and KU will remain involved in community activities at levels comparable to or greater than those at which they were involved

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[165] See I T.E. 124 (testimony of Dr. Erhard Schipporeit stating: "E.ON . . . stands behind the commitment of LG&E that we will continue to support the economic development of this Commonwealth, and . . . we will commit and stand behind the efforts to support several functions in this community, and we will also commit to continue with, let me say, the charitable contributions to this community, at least at the same level like today, at least at the same level. So these are benefits we fully stand behind, and we commit that this should continue in the future."). See also Appendix A, Other Commitments and Assurances, Items 3 and 8.
[166] I T.E. 124.

before the Powergen-LG&E Energy merger.[167] In addition, E.ON and Powergen commit to maintaining and supporting the relationship between LG&E and KU with the communities that each serves for a period of 10 years from the Powergen-LG&E Energy merger.[168] LG&E and KU historically have been committed to industrial development and similar projects designed to benefit Kentucky's economy. After the proposed transaction both companies will continue their leadership roles in Kentucky's economic development. The companies are strongly committed to supporting the Commonwealth and its communities, and have an important stake in the development and expansion of Kentucky's economy.

With regard to charitable giving, E.ON adopts the commitment Powergen made in Case No. 2000-095 to make or to cause LG&E and KU to make annual charitable and other contributions on a level comparable to or greater than the participation levels experienced prior to the Powergen-LG&E Energy merger.[169] E.ON understands that the primary purpose of the LG&E Energy Foundation, an $18 million endowed charitable corporation that supports activities and agencies in LG&E's service territory, is to support charitable causes in LG&E's and KU's service territories. After the proposed transaction, the foundation will remain under the control of LG&E Energy's Board of Directors, but will have its own Board of Directors that will consist of employees knowledgeable about community interests in LG&E's and KU's service territories.[170] It is also possible that a longer-term benefit of the proposed transaction will be the investment of even greater capital resources in the region due to E.ON's status as a larger and financially stronger firm.[171]

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[167] I T. E. 124; Appendix A, Other Commitments and Assurances, Item 3.
[168] Appendix A, Other Commitments and Assurances, Item 3.
[169] I T.E. 124; Appendix A, Other Commitments and Assurances, Item 3.
[170] JA, pp. 18-19; Pre-Filed Testimony of Dr. Hans Michael Gaul, p. 18.
[171] Pre-Filed Testimony of Dr. Kenneth Gordon, p. 16.

7. **Summary**

The evidence in this case demonstrates that LG&E's and KU's customers and employees, as well as the Commonwealth as a whole, will not be harmed by, and in fact stand to benefit from, the proposed acquisition and transfer of ownership and control. The proposed transaction will have no negative impact on this Commission's regulation of the two utilities. The transaction, as proposed, satisfies the criteria in KRS 278.020(5) and provides an uncommon and exceptional opportunity for Kentucky that should result in its national and international recognition as the center of the vital energy industry.

V. **The Proposed Transaction Will Be Transparent With Regard To Utility Operations, Regulation, Contractual Relationships, and Low-Income Ratepayers.**

A. **LG&E'S and KU'S Operations**

1. **Management Unchanged**

E.ON expects that LG&E Energy, LG&E and KU will continue to be directed and managed after the proposed transaction as they are directed and managed now. One of the reasons E.ON decided to acquire Powergen is the teamwork that has been established among Powergen's, LG&E's and KU's existing technical and managerial staffs. As Mr. Wallis explained at the hearing, while the transaction was being negotiated E.ON was "very keen that, whatever happened, that the management teams were kept together."[172]

Because of this, E.ON intends to preserve not only the separate existences of LG&E Energy, LG&E and KU, but also the managerial staffs of those three companies following the proposed acquisition.[173] The Joint Applicants thus commit that they will maintain the highest level of management experience within LG&E Energy, LG&E and KU, and will provide an opportunity to broaden that experience by exchanging positions with other managers in E.ON's

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[172] I T.E. p. 181.

or Powergen's organization.[174] At the hearing, Dr. Schipporeit emphasized E.ON's intention "to keep … the present management on board" and explained E.ON's reasoning when he stated, "we not only need financial resources; we need desperately capable managers for implementing our strategy. Therefore we rely on the management team we now see here, and we don't foresee any major changes. This is our position."[175] Dr. Schipporeit then advised that in order to retain the existing management of LG&E and KU, E.ON is implementing a retention and incentive program for the present management team.[176] E.ON therefore makes the following commitment:

> E.ON has engaged an external consultant and commits to develop a retention and incentive program for Powergen, LG&E Energy, LG&E and KU managers to be implemented following the consummation of the acquisition. The plan will be developed with the goal of being finalized by the Autumn 2001.[177]

With respect to senior management, Mr. Staffieri will remain the President and CEO of LG&E Energy, LG&E and KU, and the other corporate officers of those companies will be entitled to maintain their current titles and responsibilities unless and until otherwise determined by each company's respective Board of Directors.[178]

E.ON's decision to maintain the separate existences and managerial staffs of LG&E Energy, LG&E, and KU has cleared the way for the Powergen-LG&E Energy team that is already in place and operating well to continue to focus on LG&E's and KU's operations in Kentucky. This is clear proof that E.ON views LG&E and KU to be a team that will continue to manage and develop LG&E's and KU's Kentucky operations, and will support E.ON's efforts to acquire additional utility systems in the Midwest market.[179]

[173] Pre-Filed Testimony of Mr. Victor A. Staffieri, p. 4.
[174] Pre-Filed Testimony of Dr. Hans Michael Gaul, p. 22; Appendix A, Operations and Financials, Item 11.
[175] I T.E. 102.
[176] I T.E. 103.
[177] Appendix A, Additional Commitments, Item 6.
[178] Pre-Filed Testimony of Mr. Victor A. Staffieri, p. 4; Appendix A, Operations and Financials, Item 11.
[179] Pre-Filed Testimony of Mr. Victor A. Staffieri, pp. 4-7.

LG&E and KU will continue to prosper based in part on the combined technical and managerial abilities flowing from last year's Powergen-LG&E Energy merger, while at the same time acquiring further strength by sharing in E.ON's additional technical and management expertise.

2. Kentucky's Voice Will Continue to Be Heard

No changes are anticipated with respect to LG&E Energy's Board of Directors. LG&E Energy's Board will continue to have three members, including Victor A. Staffieri, President and CEO of LG&E Energy, LG&E and KU.[180] In addition, E.ON will honor the commitment Powergen made in Case No. 2000-095 to maintain a seat on the Powergen Board for a U.S. citizen who resides in LG&E's or KU's service territory.[181] Although the members of the Powergen Board are expected to change as a result of the E.ON acquisition, the change will not affect Powergen's commitment to have a seat on the Powergen Board for a U.S. citizen who resides in LG&E's or KU's service territory. And, as Mr. Wallis explained, beyond that necessary change, "the management organization and the way of running the company would not change."[182]

Kentucky's voice also will be heard through E.ON's commitment to allow the CEO of LG&E Energy, LG&E and KU the right to attend and speak at E.ON AG's Management Board meetings on those issues that involve those companies or are of importance to Kentucky.[183] This is a common and prudent practice for all major subsidiaries of E.ON to have their respective CEOs presenting on all E.ON Management Board decisions where specific interests of these

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[180] Pre-Filed Testimony of Dr. Hans Michael Gaul. p. 21. Mr. Victor A. Staffieri also will maintain a seat as Executive Director on Powergen's Board of Directors following the closing of the proposed transaction. JA, p. 18; II T.E. 13-14

[181] Pre-Filed Testimony of Dr. Hans Michael Gaul. p. 21; Appendix A. Other Commitments and Assurances, Item 11.

[182] I T.E. 182.

[183] I T.E. 97; Appendix A. Additional Commitments, Item 12.

companies are affected.[184] Dr. Schipporeit testified that this method would allow E.ON's Management Board of Directors to "hear the top management of Kentucky, of the LG&E CEO and of course, we will discuss such issues also, based on the expertise, with the Powergen management."[185] He further explained why this method would allow Kentucky's voice to be heard when he stated:

> [O]ur way to manage a business … is to involve the Heads of our affiliates in our structure of decision making and our decision-making process. So, of course, if there will be any major projects, investment projects, to decide for the Kentucky business or if there are any decisions to be made for dividends, then, of course, we will invite the top management, the CEO of LG&E, to present his ideas and his proposals in our Management Board like we do with all CEOs of our other subsidiaries in our company.[186]

Kentucky's voice also will be heard through E.ON's commitment to meet with the LG&E Energy advisory board approximately twice a year for input in connection with its oversight of Powergen's management of LG&E and KU.[187]

3. <u>Employees Unharmed</u>

Protecting employees is a central goal shared by E.ON, Powergen, LG&E, and KU. As was explained by Dr. Erhard Schipporeit and Mr. E.A. Wallis, E.ON views human capital as being as important as any other asset.[188] The Joint Applicants' desire to protect employees extends both to the workplace and to financial matters.

For E.ON, ensuring workplace safety is as important as other measures of business success.[189] E.ON's goal of eliminating accidents and work-related injuries protects employees,

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[184] I T.E. 97.
[185] I. T.E. 98.
[186] I T.E. 96-97.
[187] Appendix A, Additional Commitments, Item 10.
[188] Response to Data Request AG 2-7(g); I T.E. 181-82; <u>Supra</u> Section III.C.
[189] I T.E. 148-49 and 152 (Dr. Erhard Schipporeit testifying: "[I]t's an absolute must that you control workplace safety on a high level, and, for example, we are very proud that our numbers of accidents in Germany, the E.ON group, are much lower than anyone else in the business, and we put a big emphasis on that.").

creates a productive and efficient workplace, and reduces down-time and service interruptions.[190] Protecting occupational health and safety is considered to be a key responsibility of management, and E.ON Energie's Management Board supports all reasonable measures designed to improve workplace health and safety.[191]

Because local management, operations, and systems will remain intact, this will be a transparent transaction for employees.[192] There are no plans for any future significant changes in employee benefits following the proposed acquisition, the workforce reduction announced in January 2001 is complete,[193] and E.ON commits that no further planned workforce reductions in LG&E's or KU's employees will be made as a result of this acquisition.[194] Moreover, E.ON stands behind Powergen's commitment in Case No. 2000-095 that, when implementing best practices, Powergen, LG&E Energy, LG&E and KU will fully consider any related impact on customer service and satisfaction levels, including any negative impact that might result from a workforce reduction.[195]

From a financial perspective, E.ON does not expect to change the benefits offered to LG&E and KU employees as a result of the proposed transaction. Rather, LG&E and KU will continue to offer compensation and benefits that reflect fair market rates for high-quality employees, including rewards and incentives.[196]

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[190] I T.E. 151-54.
[191] Pre-Filed Testimony of Dr. Johannes Teyssen, pp. 12-13; I T.E. 151-54.
[192] Response to Data Request AG 2-7(d); I T.E. 17-19.
[193] Although the workforce reduction program is complete, some employees will not leave their positions until the end of the year. II T.E. 173.
[194] Appendix A, Additional Commitments, Item 7; See also I T.E. 62 (Dr. Erhard Schipporeit testifying: "[T]here are no concrete plans or concrete programs for further workforce reduction as a consequence of our acquistion.").
[195] Pre-Filed Testimonies of Dr. Hans Michael Gaul, p. 23 and Mr. Victor A. Staffieri, pp. 4-7; Appendix A, Service Quality and Reliability, Item 3; I T.E. 19-22.
[196] Pre-Filed Testimony of Dr. Hans Michael Gaul, pp. 22-23.

With regard to union contracts, both the International Brotherhood of Electrical Workers and the IBEW Local 2100 support the acquisition of Powergen and LG&E Energy by E.ON.[197] LG&E's and KU's union contracts will not be affected in any way by the proposed acquisition.[198] E.ON adopts the commitment Powergen made in Case No. 2000-095 to maintain a sound and constructive relationship with those labor organizations that may represent certain LG&E Energy employees; to remain neutral with respect to an individual's right to choose whether to be a member of a trade union; and to continue to recognize the unions that currently have collective bargaining agreements with LG&E and to honor those agreements.[199] E.ON will expand the use of contractors where it makes economic sense to do so without sacrificing reliability, safety, or quality.[200]

4. **Continued Commitment to Exceptional Customer Service**

E.ON understands that LG&E and KU are known for their historical commitment to exceptional customer service, and values the skill and ongoing effort that meeting such a commitment requires. E.ON's acquisition of Powergen will not affect the efforts by LG&E and KU that resulted in national recognition for LG&E Energy in the form of four J.D. Power & Associates awards in 1999 and 2000, and resulted in further recognition for LG&E Energy in the form of two additional J.D. Power & Associates awards in 2001.[201]

A clear indication that E.ON's customers are satisfied with the service they receive is that, since the deregulation of Germany's electricity market in 1998 and the introduction of

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[197] Response to Data Request Madison 1-7D.
[198] Pre-Filed Testimony of Mr. Victor A. Staffieri, p. 5.
[199] Pre-Filed Testimonies of Dr. Hans Michael Gaul, pp. 1 and 21 and Mr. Victor A. Staffieri, pp. 4-7. See also Appendix A, Operations and Financials, Item 13.
[200] Pre-Filed Testimony of Dr. Johannes Teyssen, p. 15.
[201] Pre-Filed Testimony of Mr. Victor A. Staffieri, p. 7. It recently was announced that LG&E Energy has received a first-place J.D. Power & Associates award for excellence in midsize business customer satisfaction in the Midwest and a third-place J.D. Power & Associates award for excellence in overall customer satisfaction in the Midwest

residential and industrial customer choice, only 5% to 10% of E.ON's customers have changed suppliers.[202] This is good evidence, too, that E.ON is committed to focusing on its customers' needs, and will adapt to meet those needs as they may change.

In Kentucky, E.ON will support and encourage LG&E's and KU's track records with respect to customer service. Since Powergen's acquisition of LG&E Energy, customers have experienced no change in their utility services due to the establishment of LG&E Services, Inc., and E.ON will ensure they do not going forward.[203] E.ON also will ensure that customers experience no change in their utility services due to E.ON's regulation as a holding company under PUHCA.[204] In addition, LG&E and KU will continue to operate through regional offices with existing systems, local service personnel, and field crews available to respond to customers' needs.[205] E.ON commits that local customer service offices will not be closed as a result of the proposed transaction and that, if and when local offices may be closed to achieve world class best practices, LG&E and KU will take into account the impact of the closures on customer service.[206]

Furthermore, to ensure LG&E and KU remain highly-responsive to customer needs, E.ON has agreed to stand behind the following customer service and reliability commitments made by Powergen in Case No. 2000-095:

- LG&E's and KU's transmission and distribution systems will be adequately funded and maintained;

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residential market. The modest change in LG&E Energy's rankings from 2000 to 2001 is largely attributable to the significant impact that increased gas prices had on customer satisfaction.

202 Pre-Filed Testimony of Dr. Johannes Teyssen, pp. 10-11. See also I T.E. 149-50 (Dr. Erhard Schipporeit testifying: "Well, I think the customers, by virtue of not choosing other suppliers and by communicating in our surveys and our market research, are quite happy with the service of our subsidiaries and affiliated companies. There's always room for improvement, obviously, and we're trying very hard to get better at any given time, but I think the customers in general are satisfied with the service standards and the reliability of our group.").

203 I T.E. 112-13.

204 Pre-Filed Testimony of Mr. S. Bradford Rives, p. 5.

205 E.ON commits to continue having LG&E and KU operate out of regional offices. See Appendix A, Service Quality and Reliability, Item 8.

206 See Appendix A, Additional Commitments, Item 5.

- LG&E and KU will comply with all Commission regulations and statutes;
- customers' service needs will be supplied;
- when implementing best practices, any related impact on customer service or satisfaction, including any negative impact resulting from workforce reductions, will be considered fully;
- to the extent possible, any negative impact on customer service and satisfaction resulting from workforce reductions will be minimized;
- customers will experience no change in service due to the establishment of LG&E Energy Services, Inc.; and
- LG&E Energy's level of commitment to high quality utility service, as well as LG&E's and KU's track records for superior service, will be maintained.[207]

Beyond adopting these commitments, the Joint Applicants are willing to make two more: (1) Powergen, LG&E Energy, LG&E and KU commit to provide such information as the Commission may request regarding the implementation of best practices, customer service, reliability and safety,[208] and (2) LG&E and KU will consent to this Commission's jurisdiction for safety violations by independent contractors.[209]

E.ON's own longstanding commitment to exceptional customer service, combined with its adoption of the above-stated commitments, will ensure that LG&E's and KU's customers continue to receive the same high quality energy service as they currently do. As it will be for employees, this will be a transparent transaction for customers because local management, operations, and systems will remain intact, and rates and customer service phone numbers will

[207] Pre-Filed Testimony of Dr. Hans Michael Gaul, pp. 22-23.
[208] See Appendix A, Additional Commitments, Item 1.
[209] See Appendix A, Additional Commitments, Item 2. See also I T.E. 239-40 (Mr. Victor A. Staffieri testimony stating that with regard to willful misconduct by a contractor: "[W]e think that the Commission should have jurisdiction, and so the legal position that we have taken previously we have changed.") and II T.E. 11-12.

not change. Consummation of the proposed acquisition thus will have no impact on customer service or reliability.[210]

B. Ongoing Regulation Unaffected

Following consummation of the proposed transaction, LG&E and KU will continue to function as public utilities subject to this Commission's regulatory jurisdiction. As a result, this Commission will have continuing legal authority to regulate each company's rates and services, securities issuances, requirements for certificates of convenience and necessity, and electric system operations.[211] The Commission also will have continuing authority to regulate LG&E's natural gas system.[212]

The Joint Applicants commit that the proposed transaction will have no impact on LG&E's or KU's base rates or the operation of either company's fuel adjustment clause, environmental surcharge, demand side management clause, or ESM schedule, nor will it have any effect on the operation of LG&E's gas supply clause.[213] The Joint Applicants also commit with regard to the regulation of their rates not to assert in any proceeding before this Commission preemption by the United Kingdom, the Federal Republic of Germany or other foreign regulator of the review of the reasonableness of a cost.[214] LG&E and KU will, though, retain the right to assert that charges are reasonable and appropriate.[215]

In addition to all of the above, the Commission will have continuing authority to oversee the Joint Applicants' adherence to the commitments and conditions set forth in the Commission's Orders in Case Nos. 97-300 (Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for Approval of Merger), 89-374 (Application of

[210] Pre-Filed Testimony of Dr. Hans Michael Gaul, pp. 22-23; I T.E. 112-13.
[211] Pre-Filed Testimony of Mr. Michael S. Beer, p. 1.
[212] Pre-Filed Testimony of Mr. Michael S. Beer, p. 1.
[213] Pre-Filed Testimony of Mr. Michael S. Beer, p. 2. See Appendix A, Operations and Financials, Item 7.

Louisville Gas and Electric Company for an Order Approving an Agreement and Plan of Exchange and To Carry Out Certain Transactions in Connection Therewith), and 10296 (The Application of Kentucky Utilities Company to Enter Into an Agreement and Plan of Exchange and To Carry Out Certain Transactions In Connection Therewith).[216] The Joint Applicants commit to adhere to these conditions to the extent they are not superseded by the provisions of House Bill 897 or the SEC's or the FERC's jurisdiction.[217] The conditions are restated in Appendix B to the Commission's Order in Case No. 2000-095 and concern the protection of utility resources, monitoring of the holding company and the subsidiaries, and reporting requirements.[218] In addition, the Joint Applicants commit – as Powergen did in Case No. 2000-095 – to obtain Commission approval before the transfer of any LG&E or KU asset with an original book value over $10 million; to submit to the Commission for its review any proposed amendment to the utilities' Power Supply System Agreement or Transmission Coordination Agreement thirty days before the filing of such amendment with the FERC; and to advise the Commission at least annually on the adoption and implementation of best practices at LG&E and KU.[219]

LG&E and KU also will continue to be regulated after the proposed transaction is consummated by the Virginia State Corporation Commission and by the FERC (with regard to transmission services and wholesale rates) to the same extent as before the proposed transaction. E.ON commits that LG&E and KU will file informational copies of any applications filed with

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214 Pre-Filed Testimony of Mr. Michael S. Beer, p. 7. See Appendix A, Operations and Financials, Item 4.
215 Pre-Filed Testimony of Mr. Michael S. Beer, p. 7. See Appendix A, Operations and Financials, Item 4.
216 JA, pp. 19-20; Pre-Filed Testimony of Mr. Michael S. Beer, p. 7. See Appendix A, Operations and Financials, Item 1.
217 JA, pp. 19-20; Pre-Filed Testimony of Mr. Michael S. Beer, p. 7. See Appendix A, Operations and Financials, Item 1.
218 JA, pp. 19-20; Pre-Filed Testimony of Mr. Michael S. Beer, p. 7. See Appendix A, Operations and Financials, Item 1.
219 Pre-Filed Testimony of Mr. Michael S. Beer, pp. 7-8.

the Virginia Commission for approvals concerning the money pool arrangement and capital contributions to KU with the Commission for informational purposes.[220]

C. **Contractual Relationships Unaffected**

Several entities intervened in this proceeding to raise contractual and commercial concerns. The intervenors in this category included: Alçan Aluminum Corp., Big Rivers Electric Corporation, Gallatin Steel Corporation, Kenergy Corp., and Owensboro Municipal Utilities ("OMU"). Their concerns are unwarranted and the issues they have raised have no bearing on the conclusions the Commission is statutorily mandated to reach.

E.ON has committed that the proposed transaction will have no effect or impact upon the following contractual obligations:

- KU's contract with OMU;[221]
- KU's contractual relationships with either its municipal customers or Berea College;[222]
- the performance of LG&E Energy and its affiliates of their obligations under the Big Rivers Agreements – LG&E Energy and its affiliates shall continue to be bound by the terms of those agreements, including any guaranty agreements and including the lease agreement and associated obligations between LG&E Energy's affiliates and Big Rivers Electric Corporation, as well as the power purchase agreements between LG&E Energy Marketing, Inc., Kenergy Corp., Alcan Aluminum Corporation, and Southwire Company;[223]

[220] See Appendix A, Additional Commitments, Item 8.
[221] See Appendix A, Other Commitments and Assurances, Item 4.
[222] See Appendix A, Other Commitments and Assurances, Item 4.
[223] Pre-Filed Testimony of Mr. Michael S. Beer, pp. 8-9; Appendix A, Other Commitments and Assurances, Items 5 and 6. Any revisions to these agreements must be submitted for this Commission's approval before the effective date of the revision. See also I T.E. 52-53 (Dr. Erhard Schipporeit testifying that E.ON stands behind Powergen's and LG&E Energy's commitment that the acquisition by Powergen of LG&E Energy would have no effect or impact on agreements associated with the resolution of Big Rivers' bankruptcy proceeding, including the lease agreement and associated obligations between LG&E Energy's affiliates and Big Rivers and the power purchase agreements between LG&E Energy Marketing, Kenergy, Alcan, and Southwire. Dr. Erhard Schipporeit further noted that LG&E Energy and its affiliates would continue to be bound by the terms of those agreements, including any guaranty agreements under the commitment E.ON is adopting.).

- the Power Supply System and Transmission Coordination Agreements between KU and LG&E;[224] and
- LG&E's and KU's contractual relationship with and ownership interest in the Ohio Valley Electric Corporation and KU's contractual relationship with and ownership interest in Electric Energy, Inc.

Gallatin Steel which contracts with East Kentucky Power Cooperative, Inc. ("EKPC") for power supplied by an EKPC distribution cooperative, Owen Electric Cooperative, also intervened in this matter. Neither LG&E nor KU supplies Gallatin Steel with wholesale or retail power. While various interconnection agreements exist between LG&E and EKPC over which the FERC has jurisdiction, there is no privity of contract between LG&E and Gallatin Steel,[225] and the Commission has no jurisdiction over LG&E's wholesale electric service to EKPC and its members - all interconnections between EKPC and LG&E, all agreements between EKPC and LG&E, and all rates, terms, and conditions of the Joint Applicants' transmission tariffs are within the exclusive jurisdiction of the FERC.[226] Gallatin Steel should seek relief, if any, from EKPC or OEC under KRS 278.018. Additionally, there is no evidence supporting the testimony filed in this proceeding by Mr. Charles E. Greene, IV on behalf of Gallatin Steel to the effect that Powergen caused LG&E to divert power from EKPC, thus causing interruptions to Gallatin Steel. Those arguments are untrue, wildly speculative and contrary to the best interests of LG&E's native load customers and the commitments made in Case No. 2000-095.[227] Because Gallatin Steel is not a native load customer and because LG&E is legally committed and required to serve its native load customers, the relief Gallatin Steel has requested cannot be granted - it is

[224] Pre-Filed Testimonies of Mr. Victor A. Staffieri, pp. 4-7 and Mr. Michael S. Beer, p. 8; Response to Data Request PSC 1-12; Appendix A, Operations and Financials, Item 9.
[225] II T.E. 232-34.
[226] See generally, 16 U.S.C.A. 791(a), *et seq.*
[227] See, Order Case No. 2000-095; Appendix A, Other Commitments and Assurances, Item 2.

directly contradictory to LG&E's legal obligations. As Chairman Huelsmann held during the proceeding in response to a statement by Gallatin Steel:

> We're going to rule that we don't believe that's germane to this proceeding and that the contract is between East Kentucky Power and yourselves, and, if you have a problem, there could be a complaint process or another process to go through with that. So that will be our ruling in this matter.[228]

D. Low-Income Ratepayers

At the hearing, Dr. Schipporeit explained E.ON's philosophy regarding social responsibility by stating:

> E.ON, from our tradition, from our roots in Germany, we have a strong affinity to social responsibility and, from our tradition, we also follow and please, and, for the customers and the social aspects of behaving in the Commonwealth, we feel very obliged to the social problems of the people of this community.[229]

In accordance with this philosophy, E.ON supports the ongoing discussions between LG&E and KU with the low-income advocate groups.[230] At the hearing, MHNA examined Mr. Michael S. Beer regarding the negotiation and agreement on certain issues related to and policies for low-income customers.[231] Mr. Beer testified that there was no reason to change "our position" with respect to agreements resolving issues concerning low-income customers and that he was not aware of any plans to change the current policies regarding low-income customers.[232] The Joint Applicants will make a commitment that the current policies of LG&E Energy, LG&E and KU regarding low-income customers will not change as a result of the acquisition.[233] At the hearing, an inquiry was made as to whether KU had someone available to contact in the case of an

[228] I T.E. 282.
[229] I T.E. 60.
[230] I T.E. 63, 64 and 67.
[231] I T.E. 77-82.
[232] II T.E. 78 and 82. See Responses to Data Requests MHNA 1-27, 1-28 and 1-29.
[233] Appendix A, Additional Commitments, Item 3.

emergency regarding the termination of utility service of a low-income or other customers.[234] Counsel for the Applicants replied by stating that KU will "make that arrangement to have a contact that he can call and get those matters taken care of at any time."[235] KU will commit to designate a contact person in Lexington to respond to special needs in the Lexington area.[236]

During the hearing in this proceeding, low-income intervenors raised an issue concerning the use of pre-payment meters. The Commission ruled that this issue would be handled in a separate case pending before the Commission.[237]

VI. <u>The Corporate Reorganization of Powergen and LG&E Energy Following Reorganization Should be Approved.</u>

Immediately after the consummation of the proposed acquisition, E.ON expects to make LG&E Energy a subsidiary of E.ON or of a U.S. intermediate holding company, 100% owned and fully controlled by E.ON.[238] LG&E and KU will remain directly-owned first-tier subsidiaries of LG&E Energy together with LG&E Capital Corp., LG&E Energy Marketing, Inc., LG&E Energy Services, Inc. and LG&E Energy Foundation, Inc. There will be no change in the corporate structure of LG&E Energy, or of LG&E or KU.[239] LG&E Energy will continue as a separate Kentucky corporation with two direct operating utility subsidiaries: LG&E and KU. LG&E will continue its separate corporate existence, operating under the name "Louisville Gas and Electric Company" and KU will continue its separate corporate existence, operating under the name "Kentucky Utilities Company."[240]

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[234] II T.E. 247.
[235] II T.E. 248.
[236] Appendix A, Additional Commitments, Item 4.
[237] I T.E. 192-96.
[238] JA, p. 2; Pre-Filed Testimony of Dr. Hans Michael Gaul, pp. 13 and 23. <u>See also</u> page 3 of Appendix B to the Joint Application for a diagram of the corporate structure of E.ON after the anticipated reorganization.
[239] JA, p.2; Pre-Filed Testimonies of Mr. Victor A. Staffieri, p. 3 and Mr. S. Bradford Rives, p. 2.
[240] JA, p. 16; Pre-Filed Testimony of Victor A. Staffieri, p. 3.

E.ON will own Powergen as a subsidiary either directly or via wholly-owned intermediate companies. This will provide Powergen with the regulatory status of a FUCO under PUHCA, as well as, to provide a clear corporate structure to take into account international tax requirements.[241] In explaining the corporate structure, Dr. Schipporeit testified:

> [W]e are convinced that this provides indeed a clear corporate structure because we have a clear split of responsibilities. Powergen will have the responsibility for the management, for managing the business, and we, as the shareholder, will control the business, and therefore we have to decide on major issues, like dividend policy and major investment projects, on our behalf, but the management of the business is the responsibility of Powergen. This is a split of responsibilities, and I think we are convinced that this is a clear split and provides a clear corporate governing structure for our group.[242]

At the hearing, Dr. Guntram Würzberg explained that taxes were the secondary reason for the proposed reorganization:

> [T]he decision to have LG&E and Powergen as separate subsidiaries was a business decision made on business reasons, and we are looking now to implement the best tax structure for that, but the main reason was not for that decision. It was not taxes.[243]

Intervenor Robert Madison's contention that Powergen will not be permitted to have FUCO status and be responsible for the management of LG&E Energy, LG&E and KU[244] is in error and unfounded as demonstrated by the testimony of Dr. Schipporeit and Mr. David Jackson.[245] The previous registration of Powergen and its subsidiary companies under PUHCA imposed a number of restrictions on their operations that no longer will be applicable to Powergen. The reorganization is permissible under PUHCA because Powergen will no longer own LG&E Energy[246] and Powergen will no longer receive dividends from LG&E Energy.

241 JA, p.2; Pre-Filed Testimonies of Dr. Hans Michael Gaul, pp. 13 and 23, Dr. Rolf Pohlig, p. 2, Mr. Victor A. Staffieri, p. 3 and Mr. S. Bradford Rives, p. 2; I T.E. 95-96 and 164.
242 I T.E. 95-96.
243 I T.E. 164.
244 Pre-Filed Testimony of Robert L. Madison, p. 3.
245 I T.E. 91 and 226 (Based on discussions with the SEC, we expect Powergen will qualify as a FUCO while Powergen is responsible for the management and operations of LG&E Energy, LG&E and KU.).
246 Pre-Filed Testimony of Dr. Rolf Pohlig, p. 10.

Powergen's management team will be responsible for the development and operation of E.ON's U.K.-U.S. energy business in accordance with E.ON's overall group strategy.[247]

VII. Intervenor Claims Concerning Future Acquisitions Unwarranted.

At the hearing, the examination of E.ON's witnesses suggested two conditions may be imposed on the proposed transaction: (1) the sharing of synergies from potential future acquisitions and (2) a most-favored nations clause. Both are unwarranted.

A. E.ON and Powergen Are Willing To Discuss Future Synergies With the Commission.

In the event of a subsequent acquisition over which the Commission would not have jurisdiction, E.ON is prepared to discuss with the Commission the issue of whether there would be any synergies resulting from that acquisition that could be appropriately shared with Kentucky ratepayers. During the hearing, it was suggested that it should be made as a condition of approval of this acquisition that customers will receive benefits of any savings that are derived if and when E.ON is successful in completing a second acquisition.[248] E.ON cannot commit to sharing benefits from a future acquisition today when it does not know and cannot reasonably foresee the conditions and circumstances of such an acquisition.[249] Such a restrictive commitment may expose E.ON to sharing the <u>same</u> dollar of savings from a future acquisition twice (once with the other jurisdiction and again with Kentucky) versus an equitable proportional

[247] JA, pp. 8, 16; Pre-Filed Testimony of Dr. Hans Michael Gaul. p. 19.

[248] I T.E. 34-39 and 80-83.

[249] I T.E. 37-38 (Dr. Erhard Schipporeit testifying: "We are prepared to make this commitment that, in the event of a subsequent merger over which the Commission would not have jurisdiction, we commit, together with Powergen, to discuss with the Commission the issue of whether there would be any synergies resulting from that merger that should be appropriately shared with Kentucky ratepayers, and this would mean a fair spilt of synergies .... in our understanding, a discussion would not mean only to inform the Commission about the result of this merger, but our intention, of course, is to come to a fair agreement and fair treatment and to a fair solution, but we cannot commit on anything which we don't know"); I T.E. 82-83 (Dr. Erhard Schipporeit testifying: "We can discuss any methodology with the Commission, and we can discuss this in a very open and fair way to come to a conclusion which both sides can accept , and, of course, it's our intention, if there are savings which we can share with the ratepayers of Kentucky in an appropriate way, we will do so. but once more to say, we cannot discuss any methodology or can

allocation. To impose such a condition might seriously jeopardize E.ON's ability to consummate future acquisitions which, in turn, jeopardizes possible synergy sharing with Kentucky ratepayers. E.ON has accepted the commitment made by Powergen as follows:

> In the event of a subsequent acquisition over which the Commission would not have jurisdiction, E.ON commits to discuss with the Commission the issue of whether there would be any synergies resulting from that acquisition that could be appropriately shared with Kentucky ratepayers.[250]

The condition suggested by the Commission during the cross-examination of Dr. Erhard Schipporeit are unreasonable. Such a questionable condition is unnecessary for two reasons. First, E.ON recognizes that LG&E and KU must maintain sound regulatory relations with the Commission. E.ON accepts and understands that LG&E and KU have an ongoing need for timely, objective and sound regulatory decisions by the Commission and that any effort to avoid a reasonable disposition of potential synergy savings that legitimately and in good faith should be shared with Kentucky ratepayers would seriously undermine LG&E's and KU's regulatory relations with the Commission. E.ON understands the consequences could be far-reaching and serious. Second, as Mr. Staffieri pointed out in his testimony, to the extent savings are recorded on LG&E's and KU's books, they will be recognized in LG&E's and KU's ESM calculations.[251] E.ON has embraced LG&E's and KU's ESM and has accepted Powergen's commitments to

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commit to any methodology before we have a concrete project on the table .... this does not mean we commit to inform, but we commit to discuss in a very open way together with the Commission all these issues ....").

[250] Appendix A, Other Commitments and Assurances, Item 7.

[251] II T.E. 36-39 and 41-43 (Mr. Victor A. Staffieri testifying: "I think there also is in store for us the potential that, in the event there is another acquisition and there are synergies, that, too, will redound to the benefit of consumers in Kentucky. We have an earnings sharing mechanism here. That earnings sharing mechanism provides real time analysis. It allows us, to the extent we are getting more savings that – or we're spending less money than the Commission believes is appropriate, it falls to the bottom line, and it's returnable to consumer. So, I mean, there's that potential that, in a subsequent merger, there are synergies that Kentucky consumers can share in." and "We will confer with the Commission. We will do what's fair and equitable, but we can't anticipate exactly how it will play out. I merely point out that, under the earnings sharing mechanism, there's already in place something that will allow customers at least to share in the benefits even today .... If there are savings in Kentucky as a result of synergies, then they should flow through our accounts and they should be captured by the earnings sharing mechanism ... You cannot have savings in Kentucky that don't flow through ESM .... if they hit our books and records of account, they will go through the ESM.").

renew them at the expiration of their terms. Thus, given these sound regulatory reasons, and the uncertainty of when another acquisition will occur and its conditions, E.ON's commitment is reasonable and adequate.

Additionally, there are serious legal concerns as to whether the Commission may exercise its authority pursuant to KRS 278.020(5) to impose such a condition. The Commission may not exercise its express powers to create authority that the General Assembly has not granted it. In Boone County Water District v. Public Service Commission, Ky., 949 S.W.2d 588, 591 (1997), the Supreme Court of Kentucky reiterated its long-established holding in South Central Telephone Co. v. Utility Regulatory Commission, Ky., 637 S.W.2d 649, 652 (1982) that "[a]s a statutory agency of limited authority, the PSC cannot add to its enumerated powers." The Commission "has only such powers as are conferred expressly or by necessity or fair implication." Boone County Water District at 591 (citing Croak v. Public Service Commission of Kentucky, Ky. App., 573 S.W.2d 927, 929 (1978.)). The Commission may not, in exercising its authority under KRS 278.020(5), expand its jurisdiction beyond the limits of the Kentucky and U.S. Constitutions to reach transactions beyond its state regulatory jurisdiction.

B. Imposition of a Future "Most-Favored Nations Clause" is Unreasonable.

The Attorney General's suggested "most-favored nations clause" giving Kentucky customers the same benefits imposed by other jurisdictions has no application here. There are only two retail jurisdictions – Kentucky and Virginia – involved in the consummation of the proposed acquisition. Clearly, Kentucky's approval will be the predominant state regulatory approval and the predominant regulatory approval for consummation of the acquisition. The comparison of the conditions imposed by the Virginia Commission in the LG&E Energy-KU Energy merger and again in Powergen's acquisition of LG&E Energy shows the Virginia

Commission did not impose any new conditions that were materially different than those conditions imposed by the Kentucky Commission.

VIII. Issues Related To the Powergen-LG&E Energy Merger Have No Bearing On the Proposed Transaction.

At the hearing, concerns were raised regarding issues arising out of Powergen's acquisition of LG&E Energy, as well as, the subsequent pursuit of best practices. For the reasons discussed below, these issues have no bearing on E.ON's acquisition of Powergen.

A. Additional Advisory Boards are Unnecessary.

At the hearing, the cross-examination of Mr. Staffieri raised the question of whether an additional advisory board should be established and whether additional members of the current advisory board were necessary.[252] As Mr. Staffieri explained, a single advisory board was implemented to provide efficiency and consistent advice and input to the Powergen-LG&E Energy management of LG&E and KU.[253] Additionally, the suggestion that the single advisory board as it is currently constituted contradicts to the Order in Case No. 200-095 is not correct.[254]

Mr. Staffieri further explained that the current members reflect a sound representation of Kentucky's economy and interests.[255] For these reasons, additional advisory boards are

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[252] I T.E. 17-21.

[253] I T.E. 18-19.

[254] Order Case No. 2000-095, pp. 12-13 ("Concerning the Advisory Board, given the role that board is designed to fill, the Commission does not believe it is appropriate for it to exercise any approval over the composition of that board. However ... the Commission suggests that the Applicants establish *an advisory board for LG&E and KU* (emphasis added) .... To ensure that *this board* is truly advisory, it should not include members of any of Applicants' other Boards" (emphasis added).). The members of the current advisory board are former members of LG&E and KU boards and, therefore, there is no crossover between the advisory board and the current boards of directors of LG&E Energy, LG&E or KU; I T.E. 17.

[255] I T.E. 17-18 (Mr. Victor A. Staffieri testifying: "I think they're representative of the interest of not only the residents of Kentucky, and they've served them well in the past, these are most of the former members of the LG&E and KU Board, but I think they bring a broad perspective not only of Kentucky but of business in general and how economic trends could affect Kentucky .... I think Mr. Todd and Mr. Shearer probably have a good sense of rural customers. I think Mr. Rouse, in his experience with KU, would have some experience in that regard. I'm not certain about Mr. Morton, He's lived in Kentucky his whole life, so I sense he's got an excellent perspective of rural Kentucky as well.").

unnecessary and unduly expensive, and would not provide the efficiency, single focus, and direction that are essential for the future management of the two utilities.

E.ON commits to meet with the LG&E Energy advisory board approximately twice a year for input in connection with its oversight of Powergen's management of LG&E and KU.[256]

B. The Value Delivery Team's Evaluation and Implementation of Best Practices Are Subject to Another Proceeding.

In its order approving the Powergen-LG&E Energy merger, the Commission encouraged Powergen, LG&E and KU to pursue world-class best practices following consummation of the transaction.[257] The Commission also recognized LG&E's long standing management process to improve efficiencies and processes for operating the utility business.

At the hearing, a number of questions were raised about subjects that the Value Delivery Team ("VDT") considered and, in general, Powergen's, LG&E's and KU's consideration and implementation of world-class best practices. The savings identified by the VDT review and the cost to achieve those savings, however, were determined by the Commission to be the subject of a separate proceeding and therefore not germane to this case.[258]

C. The Closing of Local Customer Service Offices Was Not Implemented.

At the hearing, a number of questions were raised about the VDT's evaluation of the potential savings of closing local customer service offices. Mr. Staffieri testified that the recommendation was considered but had not been accepted at this time.[259] Thus, while further

[256] Appendix A, Additional Commitments. Item 10.
[257] Order Case No. 2000-095.
[258] I T.E. 263-67; Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for an Order Approving Proposed Deferred Debits and Declaring the Amortization of the Deferred Debits to be Included in Earnings Sharing Mechanism Calculations, Case No. 2000-169.
[259] I T.E. 274.

savings could be achieved in closing local customer service offices, Powergen, LG&E and KU presently have made no decision to do so.[260]

E.ON recognizes the Commission's concern that closing local customer service offices may negatively impact LG&E's and KU's ability to provide customer service and, therefore, commits it will fully consider the negative impact on customer service before closing any local customer service offices.[261] E.ON also accepts and stands behind the existing commitment of Powergen, LG&E Energy, LG&E and KU to continue to operate through regional offices with local service personnel and field crews.[262]

D. <u>Customer Service and Reliability Will Continue with Achievement of World-Class Best Practices.</u>

At the hearing, a number of questions were raised about the downsizing of workforce levels earlier this year in connection with pursuing world-class best practices. The downsizing has allowed LG&E and KU to achieve efficiencies that will produce world-class best practice results and will be recognized in each company's ESM.[263] Also raised at the hearing was the issue of VDTs, including amortization of the early retirement program charge. At the hearing, the Commission ruled that this issue be handled in a separate case pending before the Commission.[264]

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[260] I T.E. 274; Appendix A, Additional Commitments, Item 5.
[261] Appendix A, Additional Commitments, Item 5.
[262] Appendix A, Service Quality and Reliability, Item 8.
[263] II T.E. 95-97 (Mr. John P. Gallagher testifying: "... we have operated a value delivery process which ran from March of last year through till early September, and we started an implementation process commencing January of this year, and so the whole process will take three years, and you will progressively see the improvement come through over that period of time .... all we are doing at the moment is putting the foundation down for improvement. For example, most of our customer service improvements are based on investment in technology. This distribution investment, which is quite a large one, the GEMNI project, will take a total of three years to implement. The implementation will seek to bring the highest returns at the earlier rather than later. So I think it's going to be another 12 months before we actually begin to see the improvements that we are seeking.)".
[264] I T.E. 263-67; <u>Supra</u> Section VIII.B.

The reduction in workforce will be offset with a modest increase in independent contractors.[265] LG&E and KU have a long-established history and practice of using outside contractors in their generation and distribution operations.[266] The evidence shows that LG&E and KU were able to continue to provide reliable service this spring and early summer during the storms.[267] In fact, this year LG&E Energy has received two more J.D. Power & Associates awards, one for residential service and another for service to commercial customers for 2001.[268]

In response to the Commission's concern regarding LG&E's and KU's provision of reliable service, the following commitments have been offered:

- LG&E and KU commit to accept the jurisdiction of the Commission over safety violations by their independent contractors.[269]

- E.ON commits that no further planned workforce reductions in LG&E's and KU's employees will be made as a result of this acquisition.[270]

Additional commitments or conditions concerning increasing or altering the workforces of LG&E or KU are not appropriate because there is no evidence that the past reductions have

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[265] Response to Data Request PSC 3-19(c); I T.E. 237-38 and 243.

[266] Response to Data Request PSC 3-19(c); I T.E. 237-38 and 243.

[267] See Response to Data Request PSC 4-16 citing three recent examples that demonstrate the Joint Applicants' commitment to service restoration utilizing a variable workforce to restore service in a safe and efficient manner: (1) On Saturday June 9, 2001, a tornado hit Main Street in London, Kentucky. A strip mall, 123 homes and 26 businesses were damaged. A total of approximately 1200 customers reported a loss of power. The tornado broke ten poles and took down numerous residential and commercial power lines. Power was restored to 79% of the customers within two hours and all service was restored within 19 hours. Nine KU crews and five contractor crews responded from the region in a planned and efficient manner. Crews were able to fully restore London without an incident or injury. Very positive remarks were received from the people in the community with regard to the efforts of these workers; (2) On Wednesday July 4, 2001, storms moved across the state in the early morning affecting Earlington, Elizabethtown, Lexington, Richmond, Norton, and Pineville areas. Somerset was severely affected by the storm and the onset of a tornado. A total of 4,600 customers were affected by this natural disaster. Service was restored to 98% of the customers within 24 hours and all service was restored within 36 hours. Eleven KU crews and eight contract crews responded from the region and worked diligently to clean up and restore service to Somerset and the other affected areas. Crews were able to fully restore customers without an incident or injury; and (3) On Sunday July 8, 2001, a series of storms hit Kentucky and continued through July 10th. Severe storms with 70-mph winds moved through Louisville, Lexington, KU rural, and Virginia ODP service areas downing numerous trees, poles, and wires. A total of 64,200 customers were affected. Power was restored to 82% of the customers within 8 hours and all service was restored within 48 hours. Many crews, comprised of 95 company crews, 50 contract crews, and 38 tree crews, responded from the region to fully restore customers with no incident or injury.

[268] See Section V.A.4.

[269] Appendix A, Additional Commitments, Item 2.

[270] Appendix A, Additional Commitments, Item 7.

caused a deterioration in the quality of customer service or reliability. In fact, the record in this case indicates quite the opposite.[271] Operating decisions like workforce management are the exclusive province of the officers and managers of the utilities, and, as stated by the United States Supreme Court during a utility rate proceeding, "good faith is to be presumed on the part of the managers of a [utility] business."[272] The utilities must have discretion to manage their human resources.

Additionally, the Commission has, without requiring additional conditions to this acquisition, the express statutory authority to investigate utility service complaints if they occur.[273] If the Commission, pursuant to KRS 278.260(1), determines that the

> services of any utility ... are unjust, unreasonable, unsafe, improper, inadequate or insufficient, the commission shall determine the just, reasonable, safe, proper, adequate or sufficient rules, regulations, practices, equipment, appliances, facilities, service or methods to be observed, furnished, constructed, enforced or employed, and shall fix the same by its order, rule or regulation .... [and] the commission shall prescribe rules for the performance of any service ... supplied by the utility, and ... the utility shall ... render the service within the time and upon the conditions provided in the rules.[274]

The Supreme Court of Kentucky in South Central Bell Telephone Co. v. Utility Regulatory Commission, Ky., 637 S.W.2d 649 (1982), held that "[a]s a statutory agency of limited authority, the PSC cannot add to its enumerated powers." Here, as in the South Central Bell case, the Commission has statutory responsibility and authority in two distinct areas – acquisitions and transfers of ownership under KRS 278.020, and complaints concerning service

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[271] Infra Section VIII.D.

[272] West Ohio Co. v. Public Utilities Commission of Ohio, 55 S.Ct. 316, 321 (1935); See also Pennsylvania Public Utility Com'n v. Philadelphia Elec. Co., 561 A.2d 1224, 1226 27 (Pa. 1989) (holding: "Although the Commission is a watchdog for the public ... the Commission must not interfere with managerial decisions of a utility absent an abuse of discretion .... It is not within the province of the Commission to interfere with the management of a utility unless an abuse of discretion or arbitrary action by the utility has been shown.").

[273] KRS 278.260 (1) provides that the Commission "shall have original jurisdiction over complaints as to ... service of any utility, and upon a compliant ... the commission shall proceed, with or without notice, to make such investigation as it deems necessary or convenient. The commission may also make such an investigation on its own motion."

[274] KRS 278.280 (1) and (2).

under KRS 278.260 and KRS 278.280. The Supreme Court in South Central Bell made it clear that when two distinct areas are subject to separate procedures, standards and remedies, and, where a statute prescribes a precise procedure, an administrative agency may not add to that provision.[275] Therefore, it would be improper for the Commission to use this proceeding under KRS 278.020 to require conditions supposedly granting the Commission power already given to it under KRS 278.260 and 278.280. The General Assembly has not granted the Commission any authority to manage LG&E's or KU's human resources.

E. LG&E and KU Adequately Advised the Commission of Powergen's Cash Capital Contribution.

At the hearing, questions were raised about the Commission's oversight of Powergen's recent cash capital contribution in December 2000 to LG&E Energy and then LG&E and KU.[276] The evidence shows LG&E and KU fully informed the Commission of this cash capital contribution and advised that its purpose was to meet the needs of LG&E's and KU's construction program and to repay short term debt.[277] The evidence further shows that LG&E and KU provided the Commission with a copy of KU's application for authority to receive cash capital contributions from an affiliate and the Virginia Commission's order granting the requested authority. Those documents and the Report of Action filed with the Virginia Commission make it clear that the proceeds from the cash capital contribution would be applied by KU to its construction program, to repay short-term debt, and for other corporate purposes. To avoid any further concerns in the future and to facilitate the Commission's oversight, E.ON, Powergen, LG&E Energy, LG&E and KU commit to notifying the Commission 30 days prior to making any capital contribution to LG&E or KU and to provide the accounting entries reflecting

[275] See generally South Central Bell Telephone Co. v. Utility Regulatory Commission, Ky., 637 S.W.2d 649 (1982).
[276] II T.E. 46-50.
[277] See Response to Data Request PSC 4-7.

the capital contribution within 60 days after the close of the month in which the contribution was made.[278]

LG&E and KU also recognize that Kentucky does not have an affiliate transaction law like Virginia's law, which requires prior approval before such capital contributions are made. To avoid any further concerns in the future and to facilitate the Commission's oversight, LG&E and KU commit that they will provide to the Commission at the time of the filing of the application a copy of any affiliate transaction applications to the Virginia State Corporation Commission for approvals concerning capital contributions to KU.[279] LG&E and KU will also provide the Commission with a copy of any order issued by the Virginia Commission on the application. This will keep the Commission fully informed of such cash capital contributions in advance before such contributions are made.

Questions were also raised about LG&E's and KU's intentions to apply the proceeds of the cash capital contributions only to their equity capital accounts. LG&E Energy's actions in fact were calculated to ensure the financial strength and debt market access of LG&E and KU by bringing LG&E's and KU's leverage ratios to the midpoint of the range quoted by Standard and Poor's consistent with the bond ratings of the two utilities.[280]

Additional questions were also asked about whether LG&E or KU issued debt to LG&E Energy in connection with the cash capital contribution. As Mr. Rives explained, LG&E and KU borrowed money from LG&E Energy through the Money Pool and used those monies to repay their outstanding short term debt.[281] Following the LG&E Energy-KU Energy merger, KU, LG&E, LG&E Energy and LG&E Capital Corp. applied to the Virginia Commission in May of

[278] Appendix A, Additional Commitments, Item 9.
[279] Appendix A, Additional Commitments, Item 8.
[280] See Response to Data Request PSC 4-7.
[281] II T.E. 53.

1999, requesting authority to incur short term indebtedness[282] and to participate in a money pool arrangement.[283] The Virginia Commission issued an order granting the requested authority on June 21, 1999. The Money Pool Agreement took effect on September 10, 1999. Mr. Rives explained that the Money Pool was "short term in nature" because the loans are due on demand.[284] Since the balances due under the Money Pool Agreement can and do change daily, approval by the Commission of this form of short term debt is not required.[285]

LG&E and KU recognize that Kentucky does not have an affiliate transaction law like Virginia's law or a requirement like Virginia's law to obtain prior approval before the issuance of short term debt. To avoid any further concerns in the future and to facilitate the Commission's oversight, LG&E and KU commit that they will provide to the Commission at the time of the filing of such applications with the Virginia Commission a copy of any affiliate transaction or short term debt financing applications involving the Money Pool.[286] LG&E and KU will also provide the Commission with a copy of any order issued by the Virginia Commission on an application concerning authority for the Money Pool. This will keep the Commission fully informed of such activities in advance.[287]

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[282] Unlike KRS 278.300, Chapter 3 of Title 56 of the Code of Virginia requires prior approval by the Virginia Commission for the issuance of short-term indebtedness having a maturity date of less than 12 months from the time of issue, of $5 million or more, unless all the proposed and outstanding short-term debt aggregates not more than 12% of the total capitalization of such utility. Code of Virginia § 56-65.1.

[283] Chapter 4 of Title 56 is the "Regulation of Relations with Affiliate Interests" law that requires prior approval of affiliate transactions.

[284] II T.E. 53.

[285] KRS 278.300(8).

[286] Appendix A, Additional Commitments, Item 8.

[287] The SEC has required LG&E and KU to modify their Money Pool arrangements by December 2002. LG&E and KU will provide informational copies of any SEC applications or filings on this subject.

IX. Application of Powergen Commitments to E.ON

Throughout this proceeding, E.ON stated that it stands behind and accepts the commitments made in the Powergen-LG&E Energy merger (Case No. 2000-095).[288] Further, throughout this proceeding, the Joint Applicants have indicated their willingness to offer and abide by certain additional commitments. Appendix A to this Brief sets forth a comprehensive list of the commitments that the Joint Applicants have made with regard to the proposed acquisition.

As noted several times during this proceeding, E.ON plans to delegate the management, development and operation of LG&E Energy, LG&E and KU to Powergen.[289] E.ON stands behind each of the commitments made by the Joint Applicants in Appendix A. The mere fact that a commitment is made by Powergen rather than E.ON should not be construed as a change in position or a lesser commitment of the Joint Applicants.

A. Several Commitments Made by Powergen have been Fulfilled.

The following commitments made by Powergen in Case No. 2000-095 have been fulfilled by Powergen:

- As soon as practicable, Powergen shall meet with the senior management and the Board of Directors of Big Rivers. [This meeting has taken place.]
- Powergen commits that the current members of the LG&E Energy Board are eligible to serve as initial members of the Advisory Board and will be invited to do so. [This invitation has been extended to the previous Board members.]
- Powergen commits to review with LG&E management its current policies and practices with respect to low income customers to determine whether policies and practices more sympathetic to the needs of such customers would be appropriate. [This review has been performed by Powergen.]

[288] JA, pp. 14, 17; Pre-Filed Testimony of Dr. Hans Michael Gaul, pp. 1 and 21; Pre-Filed testimony of Mr. Victor A. Staffieri, pp. 5-6.
[289] Response to Data Request PSC 2-7; I T.E. 48, 59, 90, 95, 96 and 181-83.

- Powergen commits that, with respect to any state-wide legislation for a low-income universal fund, it shall adopt a neutral position regarding that portion of such legislation designed to create a line item charge on utility customers' bills for the purpose of assisting low-income customers so long as such legislation has no impact on shareholders. [This legislation has been enacted with the assistance of LG&E Energy.]

Each of these commitments has been fulfilled by Powergen before the proposed acquisition, and therefore, are inapplicable to E.ON.

B. Several Commitments are Not Applicable to E.ON.

Since Powergen will be responsible for the management, development and operation of LG&E Energy, LG&E and KU, certain commitments are more appropriately made by Powergen rather than E.ON. The following Powergen commitments are inapplicable to E.ON:

- Powergen commits to taking an active and ongoing role in managing and operating LG&E and KU in the interests of customers, employees, and the Commonwealth of Kentucky, and to take the lead in enhancing LG&E's and KU's relationship with the Commission, with state and local government, and with other community interests, including, but not limited to, meetings between Powergen's chief executive and the Commission at least twice a year.

- Powergen, LG&E Energy, LG&E and KU commit to advising the Commission at least annually on the adoption and implementation of best practices at both LG&E and KU following the consummation of the merger.

- LG&E and KU commit to periodically filing the various reliability and service quality measurements they currently maintain, to enable the Commission to monitor their commitment that reliability and service quality will not suffer as a result of the merger.

The first two commitments set forth above should be made by Powergen due to its responsibility for the development and management of the operations of LG&E and KU. In addition, E.ON will commit to maintain a close working relationship with the Commission.[290] The last commitment set forth above relates to the responsibility of the two operating utilities to

[290] Appendix A, Operations and Financials, Item 12.

make filings with the Commission. It is more appropriate for this commitment to be made by the operating utilities rather than E.ON as the utilities have the information for the filings readily available.

Each of the commitments set forth above is more appropriately made by parties to this proceeding other than E.ON and such parties are willing to make these commitments. E.ON, of course, stands behind all of these commitments.

C. Two of the Powergen Reporting Commitments – If Applied to E.ON – Would Be Impractical.

The commitment by Powergen in Case No. 2000-095 with respect to the issuance of new debt or equity requires notification to the Commission if the amount of debt or equity exceeds $100 million. This commitment arose from the Commission's concern over the amount of debt being assumed by Powergen as a result of the acquisition of LG&E Energy. In this proceeding, the financial strength of E.ON is not in doubt. Powergen will continue to make this commitment, and E.ON will make a comparable commitment.[291] However, the amount should be increased to $2 billion as it relates to E.ON so as to be proportionate to E.ON's assets. After the proposed acquisition, E.ON will have available resources up to $45 billion.[292] The Powergen limitation is too restrictive for a company of the size and financial strength of E.ON. Therefore, E.ON is willing to make the following commitment:

- If new debt or equity in excess of $2 billion is issued by E.ON, E.ON commits to notify the Commission as soon as practicable prior to the issuance or at least at the time a public announcement in this regard is made.

In Case No. 2000-095, Powergen also made a commitment to the Commission relating to providing an annual report detailing LG&E Energy's proportionate share of Powergen's total

[291] Appendix A, Additional Commitments, Item 11.

assets, total operating revenues, operating and maintenance expenses, and number of employees. E.ON is unable to provide the identical information because E.ON does not keep its combined operating and maintenance expenses for its ratepayers on a comparable consolidated basis and such information is not publicly available. Therefore, E.ON is willing to make the following commitment to the Commission:

- E.ON commits to providing an annual report to the Commission detailing LG&E Energy's proportionate share of E.ON's total assets, total operating revenues, and number of employees.

D. <u>The Research and Development Commitment Should Not Apply to E.ON.</u>

In the Powergen-LG&E Energy merger, the following commitment was made with respect to research and development:

- Powergen, LG&E Energy, LG&E and KU commit to notifying the Commission in writing 30 days prior to any material changes in their participation in funding for research and development. The possible changes include, but are not limited to, any change in funding equal to or greater than 5 percent of the previous year's budget for research and development. The written notification shall include an explanation and the reasons for the change in policy.

E.ON's non-energy and nuclear research and development budgets would distort the percentages. Therefore, the Joint Applicants request that this commitment be applicable to Powergen, LG&E Energy, LG&E, and KU, but not E.ON. E.ON, of course, stands behind this commitment.

In summary, E.ON stands behind and accepts the commitments made in the Powergen-LG&E Energy merger (Case No. 2000-095) and is willing to make certain additional commitments. E.ON stands behind each of the commitments made by the Joint Applicants in

[292] Pre-Filed Testimonies of Dr. Hans Michael Gaul, p. 6, Dr. Rolf Pohlig, pp. 3 and 6, and Dr. Kenneth Gordon, pp. 4 and 15; I T.E. 32.

Appendix A. The mere fact that a commitment is made by Powergen rather than E.ON should not be construed as a change in position or a lesser commitment of the Joint Applicants.

X. Conclusion

As this Brief has summarized, and the record amply documents, the proposed acquisition and transfer of ownership and control fully satisfy the statutory criteria of KRS 278.020(4) and (5). E.ON has demonstrated its willingness and earnest desire to become a good corporate citizen of Kentucky through the numerous commitments it made during the course of these proceedings. Those commitments include, but are not limited to, these two important ones:

- Powergen, LG&E Energy, LG&E and KU commit to maintaining their respective headquarters in Kentucky for a period of 10 years following the consummation of the Powergen-LG&E Energy merger. KU's headquarters shall be maintained in Lexington, Kentucky; LG&E Energy's and LG&E's headquarters shall be maintained in Louisville, Kentucky; and Powergen's United States headquarters and E.ON's U.S. energy headquarters shall be maintained in Louisville, Kentucky for a period of 10 years following the consummation of the Powergen-LG&E Energy merger.[293]

- In the event of a subsequent merger over which the Commission would not have jurisdiction, E.ON and Powergen commit to discuss with the Commission the issue of whether there would be any synergies resulting from that merger that could be appropriately shared with Kentucky ratepayers.[294]

E.ON has made clear its intention and objective of working with the Commission and for the good of the Commonwealth going forward, and asks the Commission to accept its assurances as provided. All of these commitments, and these two in particular, when coupled with the ESMs as presently formulated, are as important to E.ON as they are to the Commission and the Commonwealth. E.ON submits that, as presently phrased, these commitments, along with the current ESMs, represent a balanced approach that can be built upon.

[293] Appendix A, Other Commitments and Assurances, Item 1.
[294] Appendix A, Other Commitments and Assurances, Item 7.

The proposed acquisition and transfer of ownership and control present the Commonwealth with an opportunity to secure LG&E's and KU's tradition of low rates and award-winning service long into the future for the benefit of all concerned, and thus, this acquisition must be approved as a matter of law. The Joint Applicants, therefore, ask the Commission to approve the acquisition.

WHEREFORE, Applicants respectfully request that the Commission enter a final order as follows:

1. Finding that, after the acquisition of ownership and control of Powergen by E.ON, LG&E and KU will continue to have the financial, technical, and managerial abilities necessary to provide reasonable service to their respective customers, and that the transfer of ownership and the acquisition of the control of LG&E and KU is in accordance with law, for proper purposes, and consistent with the public interest pursuant to KRS 278.020;

2. Approving the transfer of the ownership of LG&E and KU through the acquisition of ownership and control of Powergen by E.ON pursuant to KRS 278.020(4) and (5);

3. Determining that E.ON, Powergen, LG&E Energy or any intermediate company between LG&E Energy and E.ON will not, by reason of direct or indirect ownership of stock of LG&E and KU, be a utility in Kentucky as defined in KRS 278.010(3) as they will not own, operate, or manage any facilities used in connection with the generation, production, transmission, and distribution of electricity to or for the public for compensation, or own, operate, or manage any facility used in connection with the production, manufacture, storage, distribution, sale, or furnishing of natural or manufactured gas to or for the public for compensation for light, heat, power, or other uses;

4. Finding that it is in the public interest for LG&E to remain a combination gas and electric utility following consummation of the acquisition;

5. Certifying to the SEC under Section 33(a)(2) of PUHCA that this Commission has the authority and resources to protect the ratepayers of LG&E and KU subject to its jurisdiction and it intends to exercise its authority; and

6. Approving the corporate reorganization following consummation of the proposed acquisition of Powergen by E.ON, which reorganization will cause LG&E Energy to remain a subsidiary of E.ON but no longer be a subsidiary of Powergen, with LG&E and KU remaining first-tier subsidiaries of LG&E Energy.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by mailing a true and correct copy, via regular U.S. mail, to the following persons on the 20th day of July, 2001.

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APPENDIX A

APPENDIX A

JOINT APPLICANTS' PROPOSED COMMITMENTS

Operations And Financials

1. E.ON, Powergen, LG&E Energy, LG&E and KU shall adhere to the conditions described in the Commission's Orders in Case Nos. 10296, 89-374, and 97-300, to the extent those conditions are not superseded by the provisions of House Bill 897 or the jurisdiction of SEC or FERC. These conditions, restated in Appendix B to this Order, concern protection of utility resources, monitoring the holding company and the subsidiaries, and reporting requirements.

2. E.ON and Powergen commit that the books and records of LG&E Energy, LG&E and KU will be kept in Kentucky.

3. E.ON, Powergen, LG&E Energy, LG&E and KU commit not to assert that the SEC's jurisdiction legally preempts the Commission from disallowing recovery in retail rates for the cost of goods and services that LG&E or KU obtain from or transfer to an associate, affiliate, or subsidiary in the same holding-company system. This assertion shall also apply to any claim under the Ohio Power vs. FERC decision. However, LG&E and KU shall retain the right to assert that the charges are reasonable and appropriate.

4. E.ON, Powergen, LG&E Energy, LG&E and KU shall commit not to assert in any proceeding before the Commission preemption by the United Kingdom, Federal Republic of Germany or other foreign regulator of the review of the reasonableness of a cost. However, LG&E and KU shall retain the right to assert that the charges are reasonable and appropriate.

5. E.ON, Powergen, LG&E Energy, LG&E and KU commit to provide the Commission with notice 30 days prior to any SEC filing that proposes new allocation factors. The notice need not be in precise form of the final filing but will include, to the extent information is available, a description of the proposed factors and the reasons supporting such factors. E.ON, Powergen, LG&E Energy, LG&E, and KU commit to make a good faith attempt to resolve differences, if any, with the Commission in advance of filing with the SEC.

6. E.ON, Powergen, LG&E Energy, LG&E and KU commit that the merger will not detract from the benefits customers currently receive as a result of the merger approved in Case No. 97-300. This commitment includes LG&E's and KU's merger surcredits, the merger dispatch savings, and lower fuel costs distributed through LG&E's and KU's fuel adjustment clauses.

7. E.ON, Powergen, LG&E Energy, LG&E and KU commit that E.ON's acquisition will have no impact on the base rates or the operation of the fuel adjustment clauses, environmental surcharges, gas supply clause, demand side management clause, or ESM schedules of LG&E or KU.

8. E.ON, Powergen, LG&E Energy, LG&E and KU commit to obtaining Commission approval prior to the transfer of any LG&E or KU asset with an original book value in excess of $10 million.

9. E.ON, Powergen, LG&E Energy, LG&E and KU commit that any proposed amendment to the Power Supply System Agreement and the Transmission Coordination Agreement between KU and LG&E shall be submitted to the Commission for its review 30 days in advance of filing the amendment with the FERC.

10. E.ON, Powergen, LG&E Energy, LG&E and KU commit that LG&E Energy, its subsidiaries, LG&E and KU, and their ratepayers, directly or indirectly, shall not incur any additional costs, liabilities, or obligations in conjunction with the acquisition of Powergen by E.ON including, but not limited to, the following:.

a. LG&E Energy, LG&E and KU shall not incur any additional indebtedness, issue any additional securities, or pledge any assets to finance ar·· part of the purchase price paid by E.ON for the Powergen stock.

b. The payment for the Powergen stock shall be recorded on E.ON's books, not the books of LG&E Energy or its subsidiaries.

c. The premium paid by E.ON for the Powergen stock, as well as any other associated costs, shall not be "pushed down" to LG&E or KU for rate-making purposes.

d. All transaction-related costs, including the cost of purchase and the premium paid for the Powergen transaction, shall be excluded for rate-making purposes and from the rates of LG&E and KU.

e. LG&E and KU shall not seek a higher rate of return on equity in future rate cases than would have been sought if no acquisition had occurred.

f. The current outstanding preferred stock of LG&E and KU shall not be changed, converted, or otherwise exchanged in conjunction with the acquisition.

g. The accounting and rate-making treatments of LG&E's and KU's excess deferred income taxes shall not be affected by the acquisition by E.ON of Powergen

h. No costs of the Advisory Board shall be borne by LG&E or KU.

i. No change in control payments will be allocated to the ratepayers of LG&E and KU.

j. If early termination costs are incurred for any senior management of LG&E Energy, none of these costs will be allocated to LG&E or KU.

k. Any additional administrative costs incurred in order to comply with the financial and accounting standards of the United States, the United Kingdom or the Federal Republic of Germany as a result of this acquisition will not be borne by LG&E and KU.

l. No generation assets located within Kentucky will be sold to finance this or any subsequent acquisition without prior Commission authorization.

11. The Applicants commit that the corporate officers of LG&E Energy, LG&E, and KU shall maintain their current titles and responsibilities as officers unless and until otherwise determined by either of their respective Boards of Directors. The Applicants will maintain the highest level of management experience within LG&E Energy, LG&E, and KU, and will provide an opportunity to broaden that experience by exchanging positions with other managers in Powergen's or E.ON's organization.

12. Powergen commits to taking an active and ongoing role in managing and operating LG&E and KU in the interests of customers, employees, and the Commonwealth of Kentucky, and to take the lead in enhancing LG&E's and KU's relationship with the Commission, with state and local government, and with other community interests, including, but not limited to, meetings between Powergen's chief executive and the Commission at least twice a year. E.ON will also maintain a close working relationship with the Commission.

13. E.ON and Powergen commit to maintaining a sound and constructive relationship with those labor organizations that may represent certain employees of LG&E Energy; to remain neutral respecting an individual's right to choose whether or not to be a member of a trade union; to continue to recognize the unions that currently have collective bargaining agreements with LG&E; and to honor those agreements.

14. Powergen, LG&E Energy, LG&E and KU commit to advising the Commission at least annually on the adoption and implementation of best practices at both LG&E and KU following the consummation of the merger.

Reporting

1. If new debt or equity in excess of $100 million is issued by Powergen, Powergen commits to notify the Commission as soon as practicable prior to the issuance, and LG&E Energy commits to notify the Commission 30 days prior to the issuance.

2. E.ON commits to notifying the Commission subsequent to its board approval and as soon as practicable following any public announcement of any acquisition of a regulated or non-regulated business representing 5 percent or more of E.ON's market capitalization.

3. E.ON commits to providing an annual report to the Commission detailing LG&E Energy's proportionate share of E.ON's total assets, total operating revenues, and number of employees.

4. E.ON commits to notifying the Commission 30 days prior to paying any dividend or transferring more than 5 percent of the retained earnings of LG&E or KU to E.ON.

5. E.ON commits to filing with the Commission a copy of its annual report and its quarterly interim reports to its shareholders.

6. E.ON commits to filing with the Commission such additional financial reports as the Commission, from time to time, reasonably determines to be necessary for it to effectively regulate the operation of LG&E and KU.

Service Quality And Reliability

1. E.ON, Powergen, LG&E Energy, LG&E and KU commit that customers will experience no change in utility service due to the continuing existence and use of LG&E Energy Services, Inc.

2. E.ON, Powergen, LG&E Energy, LG&E and KU commit to: (a) adequately funding and maintaining LG&E's and KU's transmission and distribution systems; (b) complying with all Commission regulations and statutes; and (c) supplying LG&E and KU customers' service needs.

3. When implementing best practices, E.ON, Powergen, LG&E Energy, LG&E and KU commit to taking into full consideration the related impacts on the levels of customer service and customer satisfaction, including any negative impacts resulting from workforce reductions.

4. E.ON, Powergen, LG&E Energy, LG&E and KU commit that they will minimize, to the extent possible, any negative impacts on levels of customer service and customer satisfaction resulting from workforce reductions.

5. LG&E and KU commit to periodically filing the various reliability and service quality measurements they currently maintain, to enable the Commission to monitor their commitment that reliability and service quality will not suffer as a result of the merger.

6. Powergen, LG&E Energy, LG&E and KU commit to notifying the Commission in writing 30 days prior to any material changes in their partici ation in funding for research and development. The possible changes include, but are not limited to, any change in funding equal to or greater than 5 percent of the previous year's budget for research and development. The written notification shall include an explanation and the reasons for the change in policy.

7. E.ON and Powergen commit to maintaining LG&E Energy's level of commitment to high quality utility service, and will fully support maintaining the LG&E and KU track record for superior service quality.

8. E.ON, Powergen, LG&E Energy, LG&E and KU commit that LG&E and KU shall continue to operate through regional offices with local service personnel and field crews.

Other Commitments And Assurances

1. Powergen, LG&E Energy, LG&E and KU commit to maintaining their respective headquarters in Kentucky for a period of 10 years following the consummation of the Powergen-LG&E Energy merger. KU's headquarters shall be maintained in Lexington, Kentucky; LG&E Energy's and LG&E's headquarters shall be maintained in Louisville, Kentucky; and Powergen's United States headquarters and E.ON's U.S.

energy headquarters shall be maintained in Louisville, Kentucky for a period of 10 years following the consummation of the Powergen-LG&E Energy merger.

2. E.ON, Powergen, LG&E Energy, LG&E and KU commit to dedicating LG&E's and KU's existing and future generation to the requirements of LG&E's and KU's existing and future native load customers.

3. E.ON, Powergen and LG&E Energy commit that LG&E and KU shall maintain a substantial level of involvement in community activities, through annual charitable and other contributions, on a level comparable to or greater than the participation levels experienced prior to the date of the merger. E.ON and Powergen commit to maintaining and supporting the relationship between LG&E and KU with the communities that each serves for a period of 10 years from the Powergen-LG&E Energy merger.

4. E.ON and Powergen commit that the acquisition of Powergen will have no effect or impact on KU's contract with Owensboro Municipal Utilities and KU's contractual relationships with either its municipal customers or Berea College.

5. E.ON, Powergen and LG&E Energy commit that the acquisition of Powergen shall have no effect or impact on various agreements associated with the resolution of Big Rivers Electric Corporation's bankruptcy proceeding. These agreements include, but are not limited to, the lease agreement and associated obligations between LG&E Energy's affiliates and Big Rivers Electric Corporation and the power purchase agreements between LG&E Energy Marketing, Kenergy Corp., Alcan Aluminum Corp., and Southwire Co. Any revisions to these agreements must be submitted for Commission approval prior to the effective date of the revision.

6. E.ON, Powergen and LG&E Energy commit that the acquisition of Powergen shall have no effect upon the performance of LG&E Energy and its affiliates of their obligations under the Big Rivers Agreements. LG&E Energy and its affiliates shall continue to be bound by the terms of those agreements, including any guaranty agreements.

7. In the event of a subsequent acquisition over which the Commission would not have jurisdiction, E.ON and Powergen commit to discuss with the Commission the issue of whether there would be any synergies resulting from that acquisition that could be appropriately shared with Kentucky ratepayers.

8. E.ON and Powergen commit to maintaining LG&E's and KU's pro-active stance on developing economic opportunities in Kentucky and supporting economic development, and social and charitable activities, throughout LG&E's and KU's service territories.

9. As soon as practicable, Powergen shall meet with the senior management and the board of directors of Big Rivers. [This meeting has taken place.]

10. Powergen commits that the current members of the LG&E Energy Board are eligible to serve as initial members of the Advisory Board and will be invited to do so. [This invitation has been extended to the previous Board members.]

11. Powergen commits that for as long as it owns, controls, or manages LG&E or KU, there shall be a seat on the Powergen Board occupied by a United States citizen who resides in the service territories of LG&E or KU. Powergen also commits that the first occupant of that seat shall be the CEO of LG&E Energy. [Mr. Victor A. Staffieri currently serves as an Executive Director on the Powergen Board.]

12. E.ON and Powergen commit that LG&E Energy's Board of Directors shall consist of three members, one of whom shall be the current Chairman of LG&E Energy.

13. Powergen commits to review with LG&E management its current policies and practices with respect to low income customers to determine whether policies and practices more sympathetic to the needs of such customers would be appropriate. [This review has been performed by Powergen.]

14. Powergen commits that, with respect to any state-wide legislation for a low-income universal fund, it shall adopt a neutral position regarding that portion of such legislation designed to create a line item charge on utility customers' bills for the purpose of assisting low-income customers so long as such legislation has no impact on shareholders. [This legislation has been enacted with the assistance of LG&E Energy.]

15. E.ON and Powergen commit that their present expectation is for LG&E and KU to remain members of the Midwest ISO.

16. The Applicants commit that, in conjunction with the Commission review of the PBR method presently in effect for LG&E's purchased gas adjustment clause, LG&E shall propose an ESM or other alternative form of regulation that will provide LG&E with incentives to make improvements while providing a mechanism for sharing with customers the benefits realized from those improvements.

17. Upon the expiration of the LG&E and KU ESM provided for in the Commission's January 7, 2000 Orders, the Applicants commit to propose extension of the ESM or some other method of regulation that will continue to provide LG&E and KU with incentives to make improvements while providing a mechanism to share with customers the benefits realized from those improvements.

18. E.ON, Powergen, LG&E Energy, LG&E and KU commit th: LG&E Energy shall hold 100 percent of the common stock of LG&E and KU and that LG&E Energy shall not transfer any of that stock without prior Commission approval even if the transfer is pursuant to a corporate reorganization as defined in KRS 278.020(6)(b).

Additional Commitments

1. Powergen, LG&E Energy, LG&E and KU commit to provide such information as the Commission may request regarding the implementation of best practices, customer service, reliability and safety.

2. LG&E and KU will consent to the jurisdiction of the Commission for safety violations by independent contractors.

3. The current policies for low-income customers will not change as a result of this acquisition.

4. KU will designate a contact person in Lexington to respond to special needs in the Lexington area.

5. E.ON commits that local customer service offices will not be closed as a result of the proposed transaction and that, if and when local customer service offices

may be closed to achieve world class best practices, LG&E and KU will take into account the impact of the closures on customer service.

6. E.ON has engaged an external consultant and commits to develop a retention and incentive program for Powergen, LG&E Energy, LG&E and KU managers to be implemented following the consummation of the acquisition. The plan will be developed with the goal of being finalized by the Autumn 2001.

7. E.ON commits that no further planned workforce reductions in LG&E's or KU's employees will be made as a result of this acquisition.

8. LG&E and KU will file copies of any applications filed with the Virginia State Corporation Commission for approvals concerning the money pool arrangement and capital contributions to KU with the Commission for informational purposes.

9. E.ON, Powergen, LG&E Energy, LG&E and KU commit to notifying the Commission 30 days prior to making any capital contribution to LG&E or KU and to provide the accounting entries reflecting the capital contribution within 60 days after the close of the month in which the contribution was made.

10. E.ON commits to meet with the LG&E Energy advisory board approximately twice a year for input in connection with its oversight of Powergen's management of LG&E and KU.

11. If new debt or equity in excess of $2 billion is issued by E.ON, E.ON commits to notify the Commission as soon as practicable prior to the issuance or at least at the time a public announcement in this regard is made.

12. E.ON commits that, for decisions of the E.ON Management Board regarding LG&E Energy or Kentucky interests, the CEO of LG&E Energy has the right to present these interests in those meetings and to participate in the debate.

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